much different than the average city or industrial community in the United States. The range of mountains prevents industrial centers, and consequently the traffic distribution is primarily from a few large centers in California itself.

It is a very rare situation, where a carrier, particularly a common carrier, has the same tonnage moving in one direction that he has in the opposite direction. As an example, our company operates from Los Angeles to San Diego, and probably 75 percent of its traffic is southbound to San Diego and 25 percent is northbound.

The result is that we now no such thing as a balanced load.

On the other hand, between San Francisco territory and Los Angeles territory the situation is more akin to interstate transportation in the United States as a whole. The rates that are in effect between those two large centers are based upon the assumption that the traffic is moving [fol. 1592] to capacity in each direction. And, as a consequence, there is a large amount of sub-hauling. I call it—rather than leasing—between those two centers. Our company operates as a contract carrier between southern California and the San Francisco territory. We never send a truck empty or partly loaded between those points, and we use sub-haulers extensively.

If we have a truck in San Francisco whose home base of operations is Los Angeles, and we furnish him no load, some other competing carrier furnishes him a load, and he will be under contract to that competing carrier from the time that we dismiss him.

By the same token, if one of our competing carriers has no load for a sub-hauler, he will call us up and ask us if we have a load for him; and if we have, and he is on our approved list, we give him a load and have him enter into such a contract as I have submitted here, Exhibit No. 14.

By that process, and under that method, maximum use is made of equipment, and one of the largest factors in the cost of transportation is the maximum utilization of equipment. Probably the largest one of all is the load factor—balanced loads—in any kind of a haul, of any great length, 200 miles or more, the loading both ways

is a bigger factor than any single thing, in the cost of transportation. But also a very large factor is the maximum use to which that equipment is put. That was dem- [fol. 1593] onstrated to the Public Utilities Commission during the war period when they suspended general order No. 93-A as an emergency order.

There is another feature on which I would like to comment, which has to do with the subject of whether the driver must be an employee, or whether he need not be an employee.

I want to say that if the driver is an employee of the carrier, and the contract provides, such as Exhibit 14, that the responsibility of maintenance is in the owner, I know from practical experience that such a relationship will produce nothing but quarrels and lawsuits.

Why would a contractor or an owner of a vehicle want to turn his equipment over to some carrier to put any driver upon the equipment that the carrier saw fit, and be obliged to stand any abuse of that equipment or misuse of it? If such a practice prevailed, the net result of it would be that the cost of sub-hauling would be very materially raised. One of the natural advantages and consequences of sub-hauling is that the owner of the equipment, if he drives the equipment himself, takes so much better care of the equipment than any driver that a carrier may employ that, as a consequence, the cost of operation is accordingly reduced.

Now, during the war and before this General Order 93-A was entered into, our company did enter into a lease of equipment, and although we had a verbal agreement that the owner of the equipment should furnish the driver, [fol. 1594] the owner later on denied it, and sued our company for damages, claiming that they were our employees—which we didn't deny, but we claimed that it was the responsibility of the owner to furnish the driver, and that they were also his drivers.

As a result of that litigation——

Mr. Todd: Mr. Examiner, this is all very interesting, but I don't see what it has to do with the facts in this case.

Examiner Lawton: Yes.

Mr. Todd: This isn't a factual statement. I don't like to be impertinent and to interrupt, but I think we would get along a lot better if we had more of a factual statement go into the record. This is all going to have to be briefed by somebody.

Mr. Lordan: This statement regarding his interpretation of a lawsuit, and of the various claims presented by the various litigants is obviously immaterial in this record and doesn't tend to prove or disprove any of the issues involved here. The only way you could prove it would be to have the pleadings, the result of the court's decision, and everything else.

Exam. Lawton: Yes. I don't know that this is a proper place for that, Mr. Bischoff. We want your experiences with respect to leasing, and your problems, what you know about the situation, and so forth.

[fol. 1595] The Witness: Very well, I won't pursue that. I merely want to emphasize, however, that you do not get the same consequences from a situation where the owner's equipment, who has the responsibility of maintenance, is operated by an employee of the carrier. The real merit of the sub-hauling is that you have a driver of the vehicle who has an interest in the careful maintenance and operation of the vehicle.

Now, as to the character of men, it has been our experience—and our experience, of course, only goes back to the latter part of 1942—is to the effect that we have some of our very best drivers owning vehicles. They are men who were developed by our company, and would have left our employ as drivers and would have engaged in business for themselves but under this arrangement they were able to buy a truck or an over-the-road tractor and engage in business for themselves to the extent that this contract constitutes engaging in business for themselves.

The result is that the standard of conduct on a highway is as high as the conduct of our employees generally. Some of these men——

Exam. Lawton: Do you have any statistics on that, such as the other witness furnished?

The Witness: No, I haven't done that, as the other witness did. I wish I had.

Mr. Burton K. Wheeler: That is just a conclusion of the [fol. 1596] witness.

The Witness: Well, I am quite familiar with our business.

Exam. Lawton: I wish you would stick to the facts, Mr. Bischoff, rather than submit opinions.

Mr. Diehl: Mr. Bischoff, perhaps you had better tell us what your position with these six companies is, and a little more of your background. I mean I will ask you, if I may interrupt you at this time, to do that.

The Witness: I don't object to your having asked me that.

Mr. Diehl: Will you do so, with the permission of the Examiner?

The Witness: I believe I did state that I was president of each of these affiliated companies.

Mr. Diehl: If you did, I didn't hear you.

The Witness: Yes. But I don't hold that position just as a matter of form. I am actively in charge of the business.

Mr. Diehl: How long have you been so engaged in this type of business?

The Witness: Well, I started this business, but I wasn't always actively in charge. I started in 1920.

Mr. Diehl: So that the conclusions you are stating here are supported by some degree of experience which you have had in this industry?

The Witness: That is right; since 1937 I have been actively in charge, as chief executive, of the business.

[fol. 1597] Mr. Diehl: And when you state your experience, you are not just picking it out of the air; you are talking about what you know of your own operations, from the record of your company's files?

The Witness: Certainly.

Mr. Evans: How many men are on the payrolls of these six companies, Mr. Bischoff?

The Witness: 650.

Mr. Evans: How many of these are you close enough to to give good character references for if you were asked for it?

The Witness: Well, I would say half of them are employees of long standing, and those I know very well. I have been very much interested in personnel. I gave up a

professional career because I liked men, I liked to work with men. For that reason I have made it my business to be closely in contact with the men. My office has no door separating me from the men. Any employee who wants to see me can see me. He can walk right in if he sees I am not busy. As a result of that, I have very close acquaintanceship with our personnel.

We have approximately 70 executives and supervisors, and practically all of them have grown up in our organization. It is very difficult for anyone from the outside to enter our organization in a supervisory capacity because we have adopted the policy of advancing men from the ranks.

Mr. Diehl: Now, when I interrupted you, you were about [fol. 1598] to tell about your experiences with leased and owned equipment.

The Witness: Well, I already partly covered that. I would say that some of our most capable over-the-road drivers are engaged as sub-haulers, because they can make more money in those jobs when they own the equipment, due to the saving they can make on their equipment, than they could by working for wages. For that reason it has attracted some of our best drivers who otherwise would not remain drivers. They would go into business for themselves.

Exam. Lawton: You mean they were drivers for your companies and then they started out as sub-haulers?

The Witness: That is right.

Mr. Lieberman: I wonder if you could tell us about how many of your own drivers became sub-haulers and still are sub-haulers?

The Witness: I would say that on the long distance hauls most of them are former employees and are now sub-haulers.

On the shorter hauls, short jobs, which do not involve movements between terminals, in most cases those are not former employees. They do not require an investment in as large a vehicle as the long distance over-the-road haulers require. Those are usually Diesel tractors—some with 275 horsepower motors. Those are the jobs to which some of our best drivers are attracted.

Mr. Diehl: Would you, if you don't mind me interrupting

a moment, tell us how much of an investment this sub-
[fol. 1599] hauler or owner-driver has to have in one of these large over-the-road units for long haul?

The Witness: Well, the tractor alone on those units is around $11,000. And in most instances our company owns the boxes or semi-trailers. We prefer that because our trailer equipment is interchangeable. All of it is interchangeable. And if a sub-hauler owned the trailer, it wouldn't be available to him. It might be in a different part of the system when he wanted to go out.

Mr. Diehl: Now, this gentleman who has an $11,000 unit, and who is sub-hauling for you, that means that he has to either have demonstrated sufficient credit to acquire this $11,000 unit or have the money saved up to pay for it; is that right?

The Witness: That is right. Of course, I also find, in being well acquainted with personnel, that the good driver is also the frugal one who saves some of his earnings.

Mr. Evans: Mr. Bischoff, you referred to savings on owner-operated equipment. Where do those savings come in? Where would an owner-operator save on his equipment?

The Witness: He drives it more carefully, and uses the right gears; he doesn't try to pass another vehicle to see if he can do it—he is thinking about the increased cost to his equipment.

Mr. Lordan: Mr. Bischoff, how many of those pieces of
[fol. 1600] equipment do you have, out of the 450 pieces of equipment that you operate?

The Witness: The 450 are owned by our companies.

Mr. Lordan: How many besides the 450, then, are operated under this sort of a leasing arrangement?

The Witness: We have many different types of sub-hauling. We have the type where the sub-hauler merely owns a tractor and tows our trailers.

Mr. Lordan: How many of them? Let's start in right there—approximately?

The Witness: Approximately 12 of those high powered units.

Mr. Lordan: What other types do you have?

The Witness: The other types are usually trucks—not tractors.

Mr. Lordan: Truck and motor all in the same unit, a straight truck, in other words?

The Witness: Yes, and, of course, there are also——

Mr. Lordan: How many of these do you have, owner-operated?

The Witness: I think we have about 50 of them that serve no one but our companies. Now, in addition to the over-the-road operations, in which heavy duty equipment is required, we have a good many others who are not in our service exclusively. The 12 I mentioned are in our service exclusively.

Mr. Lordan: Under a long-term arrangement?

The Witness: No, there is no term about it. They [fol. 1601] execute a contract for every trip.

Mr. Burton K. Wheeler: They are dependent upon you for a trailer, however?

The Witness: Yes, they are.

Mr. Burton K. Wheeler: So that, as a matter of fact, they are tied up to you because you have the trailer and they just have the motor itself?

The Witness: We have competitors who also have the same type of trailers that they can work for if they want to.

Mr. Burton K. Wheeler: Yes, but, as a matter of fact—let me ask you this: do you finance any of these employees yourself, in buying these engines?

The Witness: No, we never have.

Mr. Burton K. Wheeler: You never have?

The Witness: No, sir. We do, however, go into their financial ability before we take them on. If we find that some broker is trying to sell them the blue sky, we tell them, "No, you are paying too much money. You can't do that." We want to know that he is solvent and that he undertakes payments that are reasonable and if he takes care of his business that he can make it.

Mr. Burton K. Wheeler: On what basis did you say you paid them?

The Witness: We have many different bases.

Mr. Burton K. Wheeler: Many different bases?

[fol. 1602] The Witness: Yes.

Mr. Burton K. Wheeler: Tell me some of the bases. Do you pay them by trips?

Mr. Burton K. Wheeler: So that, then, he has to have other employees to drive those trucks?

[fol. 1613] The Witness: Yes, sir.

Mr. Burton K. Wheeler: Would the employees that he has to drive his trucks be any more capable or careful, do you think, than the ones that you employ to drive your trucks?

The Witness: In some instances they might be; in some they might not. We have often gone into that matter, and some of our sub-haulers have a partnership. We have one where there are four drivers who formed a partnership, and they own four Diesel tractors. Those four together employ a mechanic who is also a driver and who is a relief driver when one of them can't make the run. So they adopt methods that are efficient and economical in order to increase their earnings. Their earnings are increased by the savings they make in reducing maintenance costs.

Mr. Burton K. Wheeler: How many of these sub-haulers that you spoke of, who had this high priced equipment, actually own the equipment or are buying it on the installment plan?

The Witness: Well, they all originally bought it on the installment plan. Whether any of them have fully paid for it, I wouldn't know.

Mr. Burton K. Wheeler: They only have to carry a thousand dollars insurance, is that correct, for the loss of property?

The Witness: No. Public liability, you mean?

Mr. Burton K. Wheeler: Yes.

The Witness: No. I think you misunderstood what I said.

[fol. 1614] Mr. Burton K. Wheeler: Probably I did.

The Witness: I said a person, to get a permit as a contract carrier, or a radial carrier, was only required to get insurance of $5,000 and $10,000 for personal liability and $1,000 for property damage. But that has nothing to do with sub-haulers.

Mr. Burton K. Wheeler: What about the sub-haulers?

The Witness: We carry the insurance.

Mr. Burton K. Wheeler: You carry the insurance?

The Witness: It is so stated on the back of Exhibit 14.

Mr. Burton K. Wheeler: You carry the insurance, but

you do nothing about the equipment. He has to carry his own equipment?

The Witness: That is right.

Mr. Burton K. Wheeler: If he wants to insure against collision, and damage to his own equipment, that is for him to look out for.

The Witness: That is a maintenance expense problem as far as he is concerned.

Mr. Burton K. Wheeler: Do you make a different contract with each one of these haulers?

The Witness: If the job is the same, the contract terms would be the same.

Mr. Burton K. Wheeler: Do you have a standard policy, or do you make a deal with this man on this trip, or for the same trip, or do you have different rates for different [fol. 1615] trips, and so forth?

The Witness: We have a standard price that we pay.

Mr. Burton K. Wheeler: You have a standard price that you pay to everybody?

The Witness: Where the circumstances and conditions are the same.

Mr. Burton K. Wheeler: But, of course, you have in your business so many different companies, and so forth, that you have all kinds of different distances and different kinds of work, do you not?

The Witness: Well, we have many different types of routes, many different kinds of jobs, but the company has nothing to do with it. If the contract is with one company or another, and the other circumstances are the same, the price will be the same.

Exam. Lawton: Before you leave this question of insurance, do I understand that your company carries all public liability and property damage insurance?

The Witness: Yes, sir.

Exam. Lawton: And cargo insurance?

The Witness: That is right.

Mr. Burton K. Wheeler: That is all I have.

Mr. Todd: Mr. Bischoff, along that line, I notice in your Exhibit No. 14, paragraph 4, the last sentence: "The [fol. 1616] contractor agrees that the operation of his equipment is not at any time under the control or direction of the carrier." Do you mean by that that when

the motor vehicle is being operated on the highway, that is, not under your direction as a carrier, but is under the direction and control of the sub-contractor that you hire, the sub-hauler?

The Witness: Yes, I mean just that. We obligate the contractor to perform all of the duties required by State and Federal laws.

Mr. Todd: That are imposed upon you as a carrier?

The Witness: That is right.

Mr. Todd: And you divest yourself of those responsibilities and impose them on the sub-haulers?

The Witness: No, we don't do that. We just make him agree to comply with them. But as to whether he drives 25 miles an hour on this particular segment of the highway, or whether he drives 20 miles an hour on the same segment, we do not control it. That is something that he controls.

Mr. Todd: Suppose——

The Witness: As long as he doesn't violate any laws which we are responsible for.

Mr. Todd: Well, aren't you, as a carrier, responsible for the speed laws that are imposed by the State?

The Witness: That is right, and we expect him to obey them.

[fol. 1617] Mr. Todd: And if he violates those, are you responsible or is he responsible?

The Witness: We are responsible. He is, too.

Mr. Todd: Then, you don't mean that sentence that you have got in paragraph 4 on the back of Exhibit 14, do you?

The Witness: Paragraph 4?

Mr. Todd: Yes, that last sentence that I read to you.

The Witness: Is that Arabic 4 or what is it?

Mr. Todd: It is your agreement. It has an Arabic paragraph 4. I don't see any Roman numerals on there at all. "The contractor agrees that the operation of his equipment is not at any time under the control or direction of the carrier."

The Witness: That is right.

Mr. Todd: I notice that on this contract there is the Southern California Freight Forwarders' name and also the Southern California Freight Lines.

The Witness: That is right.

Mr. Todd: As a freight forwarder, is it the business of that company to solicit more or less small shipments of freight, consolidate them, and then turn them over to a motor carrier or a railroad or somebody else to haul from one place to another?

The Witness: That is true.

Mr. Todd: Does the Southern California Freight Forwarders utilize the services of the Southern California Freight Lines, which, I take it, is a regular route common [fol. 1618] carrier, by motor vehicle?

The Witness: That is right.

Mr. Todd: And then the Southern California Freight Lines employs the sub-haulers, in some instances at least, to haul the freight; is that it?

The Witness: Yes, in some instances merely within the city limits.

Mr. Todd: Does the Southern California Freight Lines also, on its own behalf, solicit ltl freight and consolidate in the truckloads and then have it moved by these sub-haulers?

The Witness: Yes, it does.

Mr. Todd: What is the difference in the service or the degree of responsibility for transportation that is assumed by the Southern California Freight Forwarders and that that is assumed by the Southern California Freight Lines, particularly in the handling of ltl freight?

The Witness: I think in each case they assume the responsibility that the statute calls for.

Mr. Todd: What is the difference, though?

The Witness: They are both——

Mr. Todd: What is the practical difference in the two operations where the Southern California Freight Lines is using a sub-hauler and the Southern California Freight Forwarders is using what I take it is a certificated hauler? [fol. 1619] What is the difference between the two services, when they are handling less than truckload freight?

The Witness: The relationship is entirely different.

Mr. Todd: The relationship between whom?

The Witness: Between Southern California Freight Forwarders and the underlying carrier, Southern California Freight Lines.

The Witness: Yes.

Mr. Burton K. Wheeler: Do you pay them a portion of what the rate is?

The Witness: Yes, that is a very common method.

Mr. Burton K. Wheeler: Well, what did you pay them before you got the last raise granted by the Commission? What did you pay them for a trip?

The Witness: It would depend on what trip it was.

Mr. Burton K. Wheeler: Well, did you pay——

The Witness: We made some adjustments whenever we had a new wage scale, and whenever any rate increase was granted, we made an adjustment.

Mr. Burton K. Wheeler: How much of an adjustment did you make?

The Witness: On the percentage basis we didn't make any because the percentage remained the same. They got the larger portion of the increase. We have an operation between San Francisco and Los Angeles, and the prevailing practice has been for some years for the carrier to pay, or take 13½ percent and the remainder goes to the owner of the unit if he furnishes the tractor and the trailer equipment also.

If we furnish the trailer equipment, then, we have a mileage charge, which is deducted from the amount paid [fol. 1603] to the contractor.

Mr. Lordan: Mr. Bischoff, if this arrangement with relation to safe and expedient and economical operations of equipment, when it is operated by the owner-operator, is so efficient under that basis, why don't you operate all of your pieces of equipment through owner-operators?

The Witness: Well, I am not saying that it is efficient in all situations. I mentioned that when we have an unbalanced load it is not efficient to keep a surplus of equipment standing idle, because one of the big items of costs of transportation is in the use factor. If your equipment is constantly rolling, your costs are correspondingly less than if they are standing idle.

Mr. Lordan: Mr. Bischoff, do you operate trucks of your own between Los Angeles and San Diego?

The Witness: Yes, most of the trucks are our own between those points.

Mr. Lordan: Do you operate trucks of owner-operators between Los Angeles and San Diego?

The Witness: Yes.

Mr. Lordan: Do I understand that the statement you previously made on your own direct examination is that the maintenance and upkeep of owner-operator equipment and the use of it is far better and more economical when it is operated on the highway by the man who owns the [fol. 1604] equipment because he takes care of the gears, thinks about the equipment itself, he owns it, and he is careful with it? Is that so?

The Witness: That is so of a great many. I wouldn't say that is so of all of them.

Mr. Lordan: Well, why don't you operate all of your pieces of equipment that operate on a line haul operation by virtue of an owner-operator agreement, not just part?

The Witness: I think we do make a practice of operating our own wherever we can keep our own going at full capacity.

Mr. Lordan: In other words, where you have a balanced operation with your own equipment, you utilize your own equipment?

The Witness: That is correct.

Mr. Lordan: Where you have an unbalanced movement, you utilize your own equipment in so far as maintaining the balance is concerned, but the overflow you give to an owner-operator?

The Witness: To a large extent, yes.

Mr. Lordan: In the instance that you recited, Los Angeles to San Diego, you have 75 percent of the freight moving one way; is that right?

The Witness: That is right.

Mr. Lordan: So that for every three trucks going to San Diego you have only one truckload coming back?

The Witness: That is right.

[fol. 1605] Mr. Lordan: So how do you do that? You operate one round trip and the other two southbound trips are operated by owner-operators; is that right?

The Witness: No, that isn't true. We can't get enough owner-operators to handle it.

Mr. Lordan: In other words, the freight isn't there for

them to bring back so they won't operate on a one-way haul?

The Witness: Well, one thing that must be remembered is that freight may be in a community, in an area, but it doesn't mean that we have the business under our control. Our competitor may have some business under control at a time when we do not have it.

Mr. Lordon: Mr. Bischoff, you are familiar—you have been here at the hearing—with Mr. Blanning's testimony, are you not?

The Witness: Yes, I am.

Mr. Lordan: And you are familiar with his proposals. You being an attorney have studied them, have you not?

The Witness: Yes.

Mr. Lordan: What is your suggestion to this Commission as to whether or not a certificate holder should operate a portion of his equipment, as compared to some of the instances recited by Mr. Blanning where the certificate holder didn't operate any of his equipment at all, but where it was all owner-operated?

[fol. 1606] The Witness: I don't attach much importance to the fact of what percentage of the equipment is owned by him. I think that is a subject that should be left to managerial discretion. I don't think it should be the subject of regulation.

On the other hand, I think the purposes of the regulatory laws should be carried out. I don't conceive of anything in the regulatory law which determines that a carrier shall have so many pieces of equipment, and shall own so many, and shall lease so many. I think that it is a matter of judgment and discretion. And the greatest latitude should be allowed to rest where it belongs.

Mr. Lordan: In other words, do I understand you correctly, and am I interpreting your thought correctly, by saying that that shouldn't be the province of this Commission under any set of circumstances to determine whether or not a certificate holder should operate one or none or all of its equipment or anything else?

The Witness: No, as long as the purposes of the statute are carried out, I think that should be omitted.

Exam. Lawton: That is one of the important legal questions of this case. I don't think it matters so much

what any one of us thinks about it. It is a question of what the law is.

Don't you agree that that is an important legal question?

Mr. Burton K. Wheeler: Well, you are a lawyer. You have read the law, haven't you?

[fol. 1607] The Witness: Yes, I think I have.

Mr. Burton K. Wheeler: Well, you know one of the purposes of the law is so that they can have some system, and not have a breakdown of the rate structure, not only as it affects trucking but as it affects every other transportation medium in the country. So, consequently, it is important, is it not, for the Commission to issue rules and regulations which will maintain a rate structure which is not only right for the trucking industry but likewise as it applies to every other transportation system or medium in the country? That was the purpose of the law and that is what is stated in the law. So if you are doing something which tends to breakdown the rate structure, it is entirely within the Commission's right, and not only within the Commission's authority but it is the Commission's duty to see that the regulations are carried out?

The Witness: I am very glad to have an opportunity to answer that question, because I have heard that discussed pro and con in these proceedings. To start with, in my opinion, the method employed by a carrier to reduce his costs as nothing to do with breaking down the rate structure.

A rate structure obviously should be the lowest possible consistent with good service, and if the management of carriers can adopt methods which reduce the cost of transportation, it is their duty to do so and I don't think it was the purpose of the law, and I don't think it is the purpose of the Bureau of Motor Carriers to prevent car-

[fol. 1608] riers from holding their costs down to a minimum.

Mr. Burton K. Wheeler: Yes, but when you take a trip lease, on of the complaints has been, as you know, in the industry—and it was pointed out by Mr. Blanning—that when you simply have a trip lease, the man who takes it, we will say, from Los Angeles to Phoenix, Arizona, has a one-way trip. When he gets to Phoenix, he is through. He then has to go to try to pick up a shipment coming back

to Los Angeles, and he is inclined, as Mr. Blanning has pointed out, and as others have complained, the tendency is to take it at any price he can get in order to come back with it. Whereas a common carrier has to comply with the rate structures that are applied by the Commission.

Mr. Boyd: I just wondered, sir, if the counsellor is telling the witness what he should say or whether this conversation is proper for this time and place.

Exam. Lawton: I would suggest that argument be reserved for briefs.

Mr. Burton K. Wheeler: Well, these facts have been pointed out by Mr. Blanning as some of the reasons why it is necessary to have some rules and regulations. But this gentleman apparently feels that they shouldn't have any rules, but that they should simply turn it over to the carrier, and let the carrier go out and have gypsies or do anything they want to.

[fol. 1609] The Witness: I don't think that is what I testified. I think some of the abuses that Mr. Blanning testified to exist, and I think they can be corrected by proper rules and proper enforcement of rules, but I say that the relationship of the vehicle owner and the carrier has nothing to do with it, I don't think that is the road we should travel in order to correct abuses such as exist.

Exam. Lawton: All right.

Mr. Diehl: Mr. Witness, is your rate level generally higher now than it was in 1940, or lower?

The Witness: It is higher.

Mr. Diehl: When did you start using leased units? When did you indulge in this business for the first time, but with permission of the California people, of utilizing equipment other than company owned?

The Witness: In 1942.

Mr. Diehl: And you testify that your rate level is higher now than it was then?

The Witness: Yes.

Mr. Diehl: Thank you. That is all.

The Witness: Our costs would be higher, independently of what the level of rates was, if we were not using subhaulers such as I have described.

Mr. Burton K. Wheeler: How is that, again? I couldn't hear you because of the side talk.

[fol. 1610] Exam. Lawton: Repeat it, please.

The Witness: Would you read it?

Exam. Lawton: Read it.

(Record read by the reporter.)

Mr. Lordan: Mr. Bischoff, if there were another carrier in direct competition with you on an identical operation and using entirely 100 percent company-owned equipment, would his costs be higher, assuming his operation were generally efficient?

The Witness: Everything else being equal, I would say they would be, yes.

Mr. Lordan: He would have to have a higher rate structure in order to maintain his operation than you would, wouldn't he?

The Witness: No. He might be satisfied with a smaller profit.

Exam. Lawton: Mr. Bischoff, do I understand that all of your testimony regarding the use of sub-contractors relates to intrastate transportation within California?

The Witness: No, it applies to both. We have interstate rates on practically all of the routes for which we have a certificate of public convenience and necessity.

Exam. Lawton: Is that intrastate in California?

The Witness: Well, we do go to Arizona.

Exam. Lawton: And you use the same contract as shown in Exhibit 14 with respect to all of those operations?

[fol. 1611] The Witness: That is true, Mr. Examiner.

Mr. Burton K Wheeler: Your largest competitor is the Pacific Freight Lines, Inc.?

The Witness: It is the principal competitor, yes.

Mr. Burton K. Wheeler: They own almost all of their equipment, do they not?

The Witness: Yes.

Mr. Burton K. Wheeler: So that your principal competitor, who owns practically all of the equipment, wouldn't be able to furnish trailers, would he, to these 12 men who work for you, very well?

The Witness: This company has equipment idle now. He wouldn't need any sub-haulers.

Mr. Burton K. Wheeler: He wouldn't need any sub-haulers?

The Witness: No.

Mr. Burton K. Wheeler: But you have less equipment, and so you resort to these sub-haulers?

The Witness: We would resort to sub-haulers if we had enough volume, before we would acquire additional equipment.

Mr. Burton K. Wheeler: How is that, again?

The Witness: Will you read it?

Exam. Lawton: Read the answer.

(Answer read by the reporter.)

Mr. Burton K. Wheeler: During and right after the war when trucks were scarce and difficult to get, your company used sub-haulers, then, did it? That was the reason, was [fol. 1612] it not?

The Witness: No. Before the war, or about the time of the war, and before the emergency amendment to 93-A, we leased the equipment and operated equipment with our own drivers because that is what the rule called for. But shortly after the beginning of the war, that rule was relaxed and then our hands were untied, so that we could run the business the way we thought it would be efficient, and did so.

Mr. Burton K. Wheeler: The way you thought it would be efficient would be to hire these sub-haulers who drove their own trucks rather than have them as employees of yours?

The Witness: We think that is one efficient method, yes.

Mr. Burton K. Wheeler: The reason that you stated here, was that the only reason why you preferred not to have them as employees of yours?

The Witness: Well, the employing part of it is only to enable—we want the owner of the vehicle to be responsible for the maintenance of the equipment, and being responsible for it, he should select the driver of that equipment, and not our company.

Mr. Burton K. Wheeler: Supposing he has several trucks. He can only drive one of them, of course; isn't that so?

The Witness: That is true.

Mr. Todd: What is the difference?

The Witness: The difference is that the Southern California Freight Forwarders is the representative, deals with the shipper, whereas there is no relationship between the sub-hauler and the shipper.

Mr. Todd: That is right. And there is no relationship between Southern California Freight Lines and the shipper when it is hauling the traffic that the Southern California Freight Forwarders has solicited?

The Witness: That is correct.

Mr. Todd: So now what is the difference between the two?

The Witness: I thought I just stated it.

Mr. Todd: I don't think you did.

The Witness: In the case of the Southern California Freight Forwarders, it is an express company under state law, and a forwarder under Part IV of the Interstate Commerce Act. It is representative, and deals with the shipper.

Mr. Todd: That is right.

[fol. 1620] The Witness: Whereas the sub-hauler under no circumstances deals with the shipper.

Mr. Todd: With that I agree. But what is the difference between the sub-hauler's position when he is hauling freight for the Southern California Freight Forwarders, freight that they have solicited, what is the difference between his position and the position of the Southern California Freight Lines when it is hauling the freight that the Southern California Forwarders have solicited?

The Witness: I think there are a good many differences. In one case the Southern California Freight Lines has responsibility to the public——

Mr. Todd: What is its responsibility to the public when it is hauling the traffic of the Southern California Freight Forwarders?

The Witness: Just the same as if it was hauling traffic for a shipper. He is the underlying carrier.

Mr. Todd: On what bill of lading is it hauled?

The Witness: Bill of lading of the Southern California Freight Lines, for the Southern California Freight Forwarders.

Mr. Eldred: Well, you don't give the Southern California Freight Lines bill of lading to the shipper, if it is

being hauled for the Southern California Freight Forwarders, do you?

The Witness: I didn't say that I did.

Mr. Eldred: No, but in one case it is being hauled on the [fol. 1621] Freight Forwarder bill of lading, isn't it?

The Witness: That is right.

Mr. Eldred: In the other case it is being hauled on the Freight Lines bill of lading.

The Witness: But the Freight Lines has to assume some responsibility to the Southern California Freight Forwarders.

Mr. Eldred: That is true, the same as your subcontractor has to assume certain responsibilities to the Southern Freight Lines; isn't that correct?

The Witness: I don't think there is any similarity at all.

Mr. Todd: Well, now, your sub-hauler here assumes certain responsibilities towards you. For example, under your contract he assumes the entire responsibility for operating the motor truck; isn't that correct?

The Witness: He assumes the responsibility of operating the contract according to the contract, yes.

Mr. Todd: I mean just as an example, if your insurance coverage, say, on your Southern California Freight Lines was $5,000 and $10,000—just as a hypothetical case—and one of these sub-haulers had an accident that involved damages that proved to be $25,000 and the sub-hauler had $15,000 under this contract, you would expect him to stand that excess damage, wouldn't you?

The Witness: Haven't you got what you mean reversed? [fol. 1622] Mr. Todd: I don't think I have.

The Witness: We assume the public liability.

Mr. Todd: Then, what do you mean by this paragraph here under contract?

The Witness: I have already explained that. That is his obligation to comply with the laws of the State.

Mr. Burton K. Wheeler: That isn't what it says.

Mr. Todd: Supposing, where you had this excess damage of $15,000 over and above your insurance coverage, that it had been occasioned by reason of the fact that this subcontractor was operating a piece of equipment on highways, and he agrees to assume the control and direction of that

equipment by this contract, and by reason of the control and direction that he assumed over the operation of that vehicle, there was damage in the amount of $15,000 in excess of your insurance coverage, would you consider that this contractor would be liable to your company for that $15,000 loss, or that you would stand it?

The Witness: We would stand it?

Mr. Todd: You would stand it?

The Witness: Yes.

Mr. Todd: You had better change the provisions of that contract, then.

Exam. Lawton: Does anyone else have any questions.

Mr. Pou: Yes.

[fol. 1623] Exam. Lawton: Mr. Pou.

Mr. Pou: Mr. Bischoff, to what extent do your companies inspect the vehicles that you obtain from these subcontractors or subhaulers?

The Witness: In the first place, before we take them, we have an application they have to fill out in which they furnish us with a full description. They have to fill out a questionnaire.

Then, we have a department called our contract department which has jurisdiction over all of these subhaulers, and the contract department has an inspector. He is a qualified top-notch driver, but he is called an inspector, and he inspects this equipment and also frequently rides with them, to see if they are qualified to handle equipment properly under all kinds of circumstances and he makes a report to the manager of the department.

Mr. Pou: Where is he located?

The Witness: Los Angeles.

Mr. Pou: Do you ever engage any of these vehicles at any place except Los Angeles?

The Witness: Yes, at San Francisco. We have an agent there, and he does a similar job. But practically all of our men are engaged in Los Angeles. That is the headquarters and the real center of operations.

Mr. Pou: But you do, on occasion, engage vehicles and [fol. 1624] drivers at San Francisco to drive south to Los Angeles?

The Witness: That is right.

Mr. Pou: And at San Francisco they are inspected by

your agent there. Now, to what extent is he qualified to make these inspections?

The Witness: He is an experienced man, as I stated a while back. Practically all of our supervisors have come from the ranks, and have been promoted. He has held every type of job from pickup driver to a long-line driver; he has been a dispatcher; he has been a tracing clerk; a claims man—he has a very wide knowledge. All of our men have to go through that procedure in order to get into these positions of responsibility.

Mr. Pou: Has his experience included experience that would qualify him to make the necessary mechanical inspection of a tractor-trailer unit?

The Witness: I would say that no one is a qualified driver who isn't qualified to do that.

Mr. Pou: Yes, sir. Is that true with respect to vehicles used by your subsidiary companies, as well as the Southern California Freight Lines?

The Witness: Yes, they are all under the same management.

Mr. Pou: The same people work for each of the companies?

The Witness: That is right.

Mr. Pou: What about certificates of physical examination, or what we commonly call medical certificates for [fol. 1625] these drivers? How do you handle that?

The Witness: Well, they are examined the same as our employees.

Mr. Pou: Do you have certificates on file for each of these drivers?

The Witness: Whether we have certificates—medical examination, I suppose is what you mean by a certificate.

Mr. Pou: Yes, sir, a certificate signed by a qualified doctor of medicine certifying that he has examined the driver and found him fit to drive.

The Witness: I wouldn't be able to answer that from my own knowledge. We have a safety director who has charge of that, and all I can say is that I understand from him that the same methods are followed on these contractors that are followed with our own employees.

Mr. Pou: You do know, do you not, that that is one of the requirements of the motor carrier safety regulations?

The Witness: Yes, and I see no reason why the rules should be different in the case of sub-haulers than in the case of employees.

Mr. Pou: And so far as you know, that is being complied with?

The Witness: Yes, that is right.

Mr. Pou: In the case of sub-haulers?

[fol. 1626] The Witness: That is right.

Mr. Pou: What about drivers logs?

The Witness: The same rule applies.

Mr. Pou: When do the drivers file their logs with you?

The Witness: At the time they turn in their truck order. Every driver is issued, by a dispatcher, what we call a truck order. All of his instructions are in writing, the same as a trainman gets on a railroad. In other words, it tells him what he is to do. We don't approve of verbal instructions. When he gets to the end of his trip, he turns in his truck order to the station agent, together with his log. That becomes part of the file.

Mr. Pou: Is he required to turn that log over at the end of the trip, before he is compensated for the trip?

The Witness: I don't think that has been the practice, no.

Mr. Pou: What assurance do you have that he will surrender the log to you and that the log will be correctly made out?

The Witness: I wouldn't be able to answer that. I would say that if any of these sub-haulers failed to comply with our practices, they probably will be warned, and if that doesn't do any good we will discontinue doing business with them.

Mr. Pou: But you don't know, do you, sir, of your own knowledge, just what your practice is?

The Witness: Well, the practice is the same in each case, whether he is an employee or whether he is a sub-hauler.

[fol. 1627] Mr. Pou: Now, at the time he commences the trip, the sub-hauler, I mean, what assurance do you have that he hasn't already exceeded the hours of service permitted by the safety regulations, either for the preceding 24-hour period or for the preceding weekly period?

The Witness: I am not able to answer that.

Mr. Pou: You don't know whether your company ascer-

tains what his hours for the recent past have been or not, do you?

The Witness: No, except in those cases where the men are employed exclusively in our service.

Mr. Pou: Then, of course, he would be just like your regular employees?

The Witness: We have all of the records that we have for our employees. But as to the others, I do not know that we have any procedure that enables us to determine it. I wouldn't object to having prescription of such a procedure, so that we would know.

Mr. Pou: You recognize, don't you, Mr. Bischoff, that there might easily be violations of the hours of service regulations if your company had not some method of ascertaining what the man's previous service, during the day previous, or the week previous, had been?

The Witness: That is true.

Mr. Pou: You spoke of some of the abuses that Mr. Blanning had testified about. Did you have reference particularly to his Exhibit No. 2?

[fol. 1628] The Witness: And his testimony. I heard that also.

Mr. Pou: Do you know that there are similar abuses in your territory?

The Witness: Well, I would say they are few and far between.

Mr. Pou: You know that there are some abuses, though, do you?

The Witness: Yes, I am sure there are. I think there are abuses on the part of employees, because every now and then we have to discharge them.

Mr. Pou: I believe you testified that you recognized that there were some abuses which needed correction, did you not?

The Witness: Yes, and I am also in sympathy with the idea of having proper regulations that will eliminate abuses as long as it doesn't smite the whole works.

Mr. Pou: Yes, sir. I believe that is all.

Exam. Lawton: How many more have questions?

Mr. Lieberman: I have just a few.

Exam. Lawton: We will take a five-minute recess.

(Recess taken.)

Exam. Lawton: We will come to order, please.

Did you have some correction you wished to make, Mr. Bischoff?

The Witness: Yes. Exhibit No. 14 for identification re-
[fol. 1629] quires an explanation. The copies I furnished to the Examiner and for the record were copies of an earlier edition, and did not contain the sentence in paragraph 4 referred to by counsel: "Contractor agrees that the operation of his equipment is not at any time under the direction or control of the carrier." That was in a later edition of this form of contract, and it is the later edition that I want to offer in evidence, and I will ask, Mr. Examiner, that this be substituted as Exhibit 14 for the one that I submitted earlier.

Exam. Lawton: Let me see if I understand that. This is the one that has the final sentence in paragraph 4: "The contractor agrees that the operation of his equipment is not at any time under the control or direction of the carrier."?

The Witness: That is right.

Exam. Lawton: Is that the correct copy?

The Witness: Yes, that is the final edition.

Mr. Lordan: So the record might be clear, Mr. Bischoff, the copies which have been distributed to counsel as exhibits were the copies and contained that sentence?

The Witness: That is correct.

Exam. Lawton: That substitution may be made.

Mr. Eldred: Mr. Bischoff, what experience did you have which necessitated the addition of the sentence to paragraph 4?

The Witness: I don't think it is based on any experience. It is based on my opinion of what is desirable to avoid law-
[fol. 1630] suits. The question of whether the relationship is of an independent contractor or that of an employee.

Mr. Eldred: In other words, then, if there is any accident with that truck, under this contract, you would contend that you are not responsible. And that it was the responsibility of the contractor; is that correct?

The Witness: That is not correct, no.

Mr. Eldred: Isn't that what the contract states?

The Witness: I don't think so.

Mr. Burton K. Wheeler: I think the contract speaks for itself.

Exam. Lawton: Yes.

The Witness: I think so.

Mr. Eldred: Might I ask Mr. Bischoff a few questions, Mr. Examiner?

Exam. Lawton: Yes, go ahead.

Cross examination.

By Mr. Eldred:

Q. You said that employees were dismissed for violations. Were they dismissed for violations of the hours of service rule?

A. Which employees?

Q. Your employees. You said you have dismissed employees for violations.

A. Well——

Q. I was asking you whether you dismissed any for violations of the hours of service rules.

[fol. 1631] A. I have no one in mind at the present time.

Q. Well, have you? I am asking you the question. Have you dismissed anyone for violation of the hours of service rule?

A. I wouldn't know. We are not too ready to treat our employees that way. We would probably warn them, and maybe they would respect our warning.

Q. Well, then, in so far as you stated that employees were dismissed for violations, you were not specifically referring to violations of the hours of service rule; is that correct?

A. It might be any kind of a disciplinary procedure.

Q. Well, was it or was it not? Let's have an answer, please.

A. I have no recollection of anyone being dismissed for violation of the hours of service rule, but I have plenty of recollection of them being warned.

Q. I see. Thank you.

Now, as I understand you, you pay the subcontractors a percentage of the revenue when they perform the complete transportation, I believe you testified, that is picking up

from the shipper and delivering to the consignee; is that correct?

A. Yes.

Q. Does he get all of the revenue or—you said about 13 per cent, you retained approximately, for that?

A. No, I don't think I gave you any percentage on that kind of a transaction. Where I said 13¼ percent, it applied to long hauls between San Francisco territory and Los Angeles territory.

[fol. 1632] Q. Well, approximately what would be the percentage that the subcontractor would receive for that type of service, percentage of the revenue?

A. Well, for short haul it is more than that.

Q. More than 13 per cent?

A. Yes.

Q. How high does it go? What is the range? I am not asking for any specific figure.

A. I have no objection to it.

Q. Well, I don't want to inquire into your personal business, I just want the range, that is all.

A. Well, I don't care anything about it. It is common knowledge. We conduct all of our business in that way. If any employee wants to know what my salary is, I tell him.

Exam. Lawton: All right. What is the range?

The Witness: For shorter hauls, which constitutes a large number of them, it is 21¼ per cent.

Mr. Burton K. Wheeler: That you retain?

The Witness: Yes. We pay 3 percent to the State Board of Equalization, and we pay one-quarter of 1 percent to the Public Utilities Commission. We pay out of that the insurance, public liability and property damage insurance, cargo insurance, and all the services of dispatchers, supervisors, and so forth, and the collection, accounting, billing, rating, all the services, claims inspection, it is all taken [fol.1633] out of that balance of 18 percent.

By Mr. Eldred:

Q. Well, now, it is pretty hard for you to lose money on a basis such as that, isn't it, when you get 18 percent for

those services? It is practically impossible for you to lose money on that sort of a setup?

A. It requires a knowledge of the whole business to be able to form an opinion about it, and I think we try to make a contract which has some mutuality, fair to both sides.

Q. As I understand it, you contend that if the owner-operator is much more efficient, maintains its equipment generally valid, he is more efficient in operating than you are; isn't that your contention?

A. I wouldn't put it that way. I think in some things the owner-operator takes a greater interest than our employees would.

Q. Well, wouldn't he have a greater interest to serve the public than you have?

A. He doesn't serve the public. He merely performs a fraction of the operation, just the same as an employee performs a certain fraction of the operation. The employee doesn't serve the public either. The employee is merely the instrumentality that the carrier uses. In like manner a sub-hauler is an instrumentality that a carrier uses.

Q. When you have the subcontractor paid on the basis of revenue, are you not, in fact, rather leasing out your [fol. 1634] rights rather than leasing his equipment?

Mr. Diehl: I object to the nature of the question, Mr. Examiner. It calls for a legal conclusion.

Exam. Lawton: A good many of these questions have called for legal conclusions.

Mr. Diehl: I didn't hear the ruling.

Exam. Lawton: I say a good many of these questions have similarly called for a legal conclusion.

Mr. Diehl: I agree, but this is one I object to.

Mr. Burton K. Wheeler: This man is a lawyer.

Exam. Lawton: Overruled.

The Witness: I don't think so.

By Mr. Eldred:

Q. You don't?

A. No.

Q. As a matter of fact, just to keep the record straight,

when the California Commission modified Rule 93-A—is that what it was?

A. General Order 93-A.

Q. —wasn't that at the request of the Office of Defense Transportation? In other words, on the basis of their rules, unless that order was modified, it would be practically impossible for your trucks to operate, just loaded one way?

A. I wouldn't know. They didn't tell me about it.

Q. Well, you were familiar with the Office of Defense [fol. 1635] Transportation requirements, weren't you?

A. Oh, yes.

Q. Well, didn't they prohibit trucks coming back empty?

A. Well, they had some regulations of their own, I remember that.

Q. Yes, and they were the ones who controlled the distribution of gasoline and tires, weren't they?

A. Yes.

Q. Wasn't it, then, really the basis of the Office of Defense Transportation rules and regulations that compelled the California Commission to take the action they did?

A. I am inclined to think that the California Public Utilities Commission also being composed of intelligent men exercised some judgment of its own.

Q. They didn't take the action prior to the Office of Defense Transportation orders going into effect, though, did they?

A. They may have. I don't remember.

Q. When was the date when they modified General Order 93-A?

A. My recollection is it was in the latter part of 1942.

Q. That is all, sir.

Cross examination.

By Mr. Diehl:

Q. Mr. Witness, do I understand from the nature of your testimony that your experience has demonstrated to you that the vehicles that you have under lease are operated in a more efficient and safe manner, with respect to accidents, than those owned by your company?

[fol. 1636] A. I would say many of them are. I couldn't say as a whole, because I made no survey.

Q. I am just asking you for your best judgment in the matter. Do I understand that your experience has demonstrated that you have less accidents, on the proratio, with the leased equipment than you have with company-owned equipment?

A. That is right.

Q. If that is so, and if there is any relationship between accidents and hours of service, does it not appear that your leased operated drivers are getting their proper rest or the accident rate would not be as you just announced it?

A. I can't say whether it is due to proper rest or whether it is due to being more careful.

Q. Well, at least the lack of rest apparently hasn't resulted in more accidents on your leased equipment than on your private equipment?

A. That is right.

Q. Now, what would be the effect of the prescription by this Commission, first, of a prohibition of all leasing, and, secondly, a severe restriction of all leasing? What would be the effect upon the operations of your company?

A. I would say it would be economically damaging.

Q. Would it be substantial, or infinitesimal?

A. I think it would be substantial because I——

Mr. Diehl: That is all.

[fol. 1637] Mr. Burton K. Wheeler: Why would it be substantial?

Mr. Lieberman: Would that in any way affect your ability to serve the public?

The Witness: I think it would reduce our capacity to serve the public.

By Mr. Lieberman:

Q. Have you ever had occasions where accidents have occurred to leased vehicles, or the subcontractors?

A. Yes, we have.

Q. In those instances have you been able to get reports from the drivers with respect to those accidents?

A. More so than from our drivers because in many in-

stances the owner-operator is interested in the damage to his own vehicle.

Q. How about cargo claims? Have you been able to get their full cooperation?

A. We have had no reason to see any distinction.

Q. Have you ever permitted subcontractors to solicit business under the guise of using your operating authority?

A. No, we have never had any abuse like that.

Q. Would you tolerate any subcontractor doing any such thing?

A. No.

Mr. Burton K. Wheeler: How could you prevent it?

Mr. Lieberman: I don't want to have any interruptions if your Honor please, while I am conducting my examination.

Exam. Lawton: If you want to ask something for clarification, please get the consent of counsel. He seems to object.

[fol. 1638] By Mr. Lieberman:

Q. Have you ever leased or made a practice to lease only a part of the carrying capacity of the subcontractor's vehicle, where you have leased the entire unit?

A. No.

Q. Would you say that there was any difference in the control, direction and domination which you exercise over your subcontractors as compared with that which you exercise over your own employees?

Mr. Eldred: I object, on the basis of his contract, to that question.

Mr. Burton K. Wheeler: The contract speaks for itself.

Mr. Lieberman: May I withdraw the question?

By Mr. Lieberman:

Q. In actual operations, is there any difference between the way you route, dispatch and manage the vehicles of a subcontractor and the way you do the same with your own company-owned equipment?

A. There is no difference as far as demanding compliance with all state and federal laws is concerned.

Mr. Lordan: I ask that the answer be stricken on the ground that it is not responsive to the question.

Mr. Lieberman: He hasn't completed the answer.

Mr. Lordan: He is an attorney and understands exactly what the answer should be.

Exam. Lawton: Please make your answers responsive. Confine it to dispatching; and so forth.

[fol. 1639] The Witness: The difference, if there is any, in any particular case, arises from the fact that if the driver of the vehicle is an employee, he may be instructed to go by Highway A until he gets to a certain point and then go by Highway B, and so on and so forth.

Whereas the owner-operator might not be obligated to follow those particular specifications. The reason for that distinction is that our maintenance department, who have the responsibility of changing tires, making repairs on the road, and so forth, want to know where to locate a driver in case he calls in and wants a mechanic, whereas the owner-driver has his own maintenance problem and so we are not concerned to the same extent as to whether he is on Highway A or whether he has detoured over Highway B for some reason.

Mr. Lieberman: Thank you. That is all.

Exam. Lawton: Does anyone else have any questions?

Mr. Wheeler: Yes.

By Mr. Burton K. Wheeler:

Q. So you have nothing to say about his breaking down or where he is going to get the repairs or anything of the kind?

A. No.

Exam. Lawton: Is there anything further?

By Mr. Driscoll:

Q. Do I understand that this contract, in substance, provides that loss and damage claims up to $500 shall be borne by the subcontractor? That is equivalent to $500 [fol. 1640] deductible; is it not?

A. Yes.

Q. And the subcontractor is responsible for that?

A. To the carrier.

Q. To the carrier?

A. That is right.

Q. And do you put the freight on their trucks, or do they go to the industry and pick up the freight themselves? In other words, do they load and unload or do you load and unload?

A. It all depends on the type of contract. We have one type under which the sub-hauler loads and unloads.

Q. That is not this type of contract, Exhibit 14, however, is it?

A. Yes, it would be.

Q. If the company loads and unloads and the subcontractor hauls, is there sometimes a question as to where the damage or the loss occurred and who was responsible for it?

A. When you say who—if the hazards mentioned in this contract are involved, then, the carrier pays for all over $500.

Q. You pay the entire amount, and then if it is $500 or less you charge it back against the other man?

A. The sub-hauler, yes, that is right.

Q. And the sub-hauler, does he have any facilities for investigating claims to know whether that damage actually occurred at all or not?

[fol. 1641] A. Well, it occurred by him, if there was a cargo loss—an upset or a fire. He was in charge of the vehicle. He knows more about it than the carrier does.

Q. But say it was a concealed damage, and perhaps it happened on the dock, before hauling or after hauling.

A. That is not a hazard covered by cargo insurance.

Q. It is not?

A. No.

Q. Well, maybe I can't read this thing as you do, but it seems to me that you are passing on a responsibility to the owner-operator, to stand a portion of the loss and damage claims, and I represent some owner-operators and they have had experiences of that kind, and they have no facilities for salvaging anything nor any facilities for investigating. So I was wondering as to the distinction between this and the $50 deductible clause in an ordinary contract.

A. Well, it all depends on the hazards. The hazards are set forth in this contract.

Q. Well, it says "fire, upset and theft when occasioned by thieves." Is that also highway robberies?

A. Yes.

Q. At any rate, when you do settle a claim, say, for a hundred dollars, you just simply charge the operator with the hundred dollars and that is all there is to it?

A. Well, he knows all about it. We never have any [fol. 1642] trouble with our sub-haulers.

Q. That is all. Thank you.

Just one question further. Are these things signed by anybody?

A. Yes.

Q. I don't see any place for the contractor to sign. I don't even see a place where he has an address.

A. Do you mean this particular sub-hauler?

Q. Anyone. This is a blank sub-hauler here.

A. These sub-haulers who operate regularly, they sign a certificate in which all these terms are embodied, so as to cover any contract then engaged in or any engaged in in the future. But these others are signed on the back or on the front.

Q. There isn't any place for the signature on the contract. I was wondering whether you had some other piece of paper to which this was an appendix or an exhibit.

A. They do have a certificate by which all parties sign when they enter into a first contract.

Q. If the Commission should look at this in your office, they would find the man's address, too, would they?

A. Yes, besides he has to sign an application, wherein he gives all his references, the description of his equipment, and everything else. We have all those records, and maintain all of those records for any investigation.

Mr. Lordan: There is no place upon this instrument, how- [fol. 1643] ever, for the contractor named and the carrier's representative to appear in the form of an agreement, as you and I, as attorneys, would call it; is that right?

The Witness: No, that is right. That follows partly from the fact that the carrier does not always see the owner. Sometimes he sees only the driver, at the time this contract is executed.

Mr. Burton K. Wheeler: Can you furnish us with the contract that he does sign?

The Witness: Yes, I can furnish that.

Mr. Burton K. Wheeler: You don't have a copy with you?

The Witness: No.

Exam. Lawton: Would you be agreeable to furnishing that within 15 days?

The Witness: Anyone who wishes to leave me their name.

Exam. Lawton: Do the parties waive copies or do you all want copies?

(No response.)

The Witness: It is a printed form so if I have the name and address, I will be glad to supply them.

Exam. Lawton: You can get that from the reporter. You have 15 days in which to do that.

Mr. Eldred: Mr. Bischoff, in all your contracts do the terms indicated on the back of Exhibit 14 appear? I mean are these terms in all your contracts with your sub-haulers?

[fol. 1644] The Witness: Yes.

Mr. Eldred: No matter whether they are on the percentage of revenue, so much a trip, or whatever?

The Witness: That is right. And the compensation is set forth on the front page in each contract so there won't be any dispute as to what the understanding is.

Exam. Lawton: If there is nothing further, you are excused. Thank you.

(Witness excused.)

Exam. Lawton: Respondent's Exhibit 14 is received in evidence.

(Respondent's Exhibit 14 heretofore marked for identification was received in evidence.)

Exam. Lawton: Mr. Diehl, will you call your witness?

T. J. WALTERS was called as a witness, sworn, and testified as follows:

Direct examination.

By Mr. Diehl:

Q. Will you please state your full name and address for the record?

A. T. J. Walters, 4535 West Adams, Chicago, Illinois.

Q. With what company are you connected?

A. American Transit Lines.

Q. In what capacity?

A. Assistant to the president.

Q. Is that company certificated by the Interstate Com-
[fol. 1645] merce Commission to do interstate business?

A. Yes.

Q. General commodities?

A. General commodities over irregular routes.

Q. What is the eastern-most area served by your company?

A. The western part of New York, the entire western section of New York.

Q. How far west do you operate?

A. Omaha, Nebraska.

Q. How many pieces of equipment are ordinarily operated by your company?

A. Approximately a hundred.

Q. What percentage of those are owned by the company?

A. About 15 percent.

Q. And the balance are under lease by owner-drivers?

A. That is right.

Q. Are all the units operated by your company carefully marked as to whether or not they are operating in the service of American Transit Lines?

A. They are.

Q. Do you have a rather prominent yellow shield on a red background indicating that?

A. That is right.

Q. Can you tell me how long American Transit Lines has been in business? Or perhaps I should say how long have
[fol. 1646] you been with them?

A. I have been with them for the past two years.

Q. And to your knowledge before then were they in business?

A. Yes, I believe they——

Q. Do they hold a certificate granted under the grandfather clause of the Motor Carrier Act?

A. They do.

Mr. Eldred: Do you know the docket number?

The Witness: No, I am sorry, I don't.

By Mr. Diehl:

Q. Mr. Walters, are you familiar with the various proposals that have been introduced in this hearing by Director Blanning and the Commission?

A. I am.

Q. To control the leasing practices?

A. Yes, sir.

Q. Can you tell me what would happen to your company if leasing were prohibited or greatly restricted, as is proposed in some of these regulations?

A. If they were prohibited, it would practically put us out of business. If they were restricted to a great extent, it would damage us considerably.

Q. What gross did your company do last year?

A. About a million dollars.

Q. What gross does your company expect to do this year?

A. About $1,200,000.

[fol. 1647] Q. Your company has been along in that figure since before you were with them; is that correct?

A. That is right.

Q. You operate in a highly competitive area, do you?

A. We do.

Q. Do you have competitors who engage in leasing, the same as you do?

A. We do.

Q. Is your company engaged in hauling a class of commodities which represents a large percentage of its gross?

A. Yes, a large percentage of our gross would be on iron and steel and iron and steel products.

Q. Besides your grandfather authority, do you have some

other authority granted you on a temporary basis by the Interstate Commerce Commission?

A. Yes, sir.

Q. If I understand you, your grandfather authority is based on Chicago, and the commercial zone, Crystal Lake and Terra Cotta?

A. Yes.

Q. And you can haul from and to that point but not through that point; is that right?

A. That is correct.

Q. Except on such temporary authority as the Commission has granted you?

[fol. 1648] A. That is correct.

Q. Has your company experienced some difficulty in getting a connecting line at Chicago on to take your westbound shipments from the east to points west of Chicago?

Mr. Eldred: I object. What is the purpose of this examination?

Mr. Diehl: Shall I explain it now?

Mr. Eldred: You might as well.

Mr. Diehl: We are going to talk about interchange of equipment, we are going to talk about the inability to transfer a lading, in many instances, which requires an interchange physically of equipment, and so forth, and so forth, and so forth.

Exam. Lawton: He may answer.

By Mr. Diehl:

Q. Did you hear the question?

A. I did. We experience that difficulty every day for the reason that we haul an unusual commodity which is iron and steel.

Mr. Burton K. Wheeler: Which question were you referring to?

Mr. Diehl: The one I last asked him about, referring to getting someone to take the interchange west of Chicago.

A. We handle an unusual commodity, iron and steel. That commodity is loaded by crane and unloaded by crane in anywhere from three thousand pounds to eight thousand pound lifts. When this material arrives at Chicago, des-

[fol. 1649] tined beyond our line, we naturally call in other carriers to inter-line that shipment, but in many cases the material has to be warehoused due to the fact that the carrier cannot supply the equipment, or hasn't the facilities for unloading.

By Mr. D[illegible]al:

Q. As a r[illegible] of that situation, did the Interstate Commerce Com[illegible]ion grant you the temporary authority to haul west of Chicago from the east?

A. They did.

Q. Now, Mr. Walters, the men who operate for you on an owner-driver basis, are they men that you see once in two years or do they work for you regularly?

A. They work for us regularly.

Q. Just as an example, how long has one of your men been regularly engaged as an owner-driver for American Transit Lines?

A. I couldn't answer that very intelligently due to the fact that I have been with them for only the past two years, but——

Q. Well, do they have some that went there before you got there and who are still there?

A. Very many of them.

Q. What system is employed by the American Transit Line normally to pay these people for their service?

A. On a percentage basis.

Q. You operate some equipment of your own?

A. Yes.

[fol. 1650] Q. What has been your experience with respect to safety operations in compliance with Interstate Commerce Commission regulations, your own equipment compared to owner-driver equipment, Mr. Walters?

A. We believe that the owner-driver observes the rules a lot more than our own drivers.

Q. Why do you think that is?

A. Because the owner-driver, working on a percentage of revenue, will try to get his truck unloaded, won't take any time on the road, where one of the company drivers will have a tendency to relax in his operation.

Q. On a percentage basis, when you are compensating on

a percentage basis, your owner-driver, in effect, has a piece of the business; is that your feeling?

A. That is correct.

Mr. Eldred: Just a minute.

Mr. Diehl: Well, I am not testifying for him.

Mr. Burton K. Wheeler: I would say you were.

Mr. Eldred: Mr. Examiner, for the witness to answer the question why it was safer with owner-drivers than with his own employees is not at all responsive to the question.

Exam. Lawton: What was the answer?

Mr. Lordan: The answer was that in his opinion it was better because they owned their own equipment. He didn't state anything about his experience.

[fol. 1651] Mr. Eldred: May we have the question and answer read, Mr. Reporter?

Exam. Lawton: Read it.

(Question and answer read by the reporter.)

Exam Lawton: I think that is responsive. Proceed.

By Mr. Diehl:

Q. Did you hear the last question?

A. No.

Q. I will repeat it. In your opinion, does the fact that the owner-driver has a piece of the business have any effect upon the performance of that owner-driver?

A. Very much so.

Q. We have heard some people speak here of gypsies, during the course of this hearing, and I am not just sure whether it was intended as a disparaging remark or not, but I have known it to be used in both ways, and when we have American Transit Lines speak of gypsies, do you have any gypsies that are working for you?

A. Not that I know of.

Q. What is your description of your owner-drivers? What do you look upon them as?

A. Our owner-drivers, I think, are very business-like people. They have the best in equipment, they strive to operate their equipment so that they can have the truck clear, and I have seen some of our boys start out with a

small tractor and trailer and finally wind up with a big unit. I don't think you could call that kind of people [fol. 1652] gypsies.

Q. They are not the romantic nomad tribe that goes around telling fortunes, are they?

A. No.

Mr. Lordan: Or making any, either, I take it.

Exam. Lawton: I get from the connotation of gypsies that they didn't stay very long in one place.

Mr. Diehl: That is the purpose of the question, Mr. Examiner, because, as I understand this witness, he tells us that from his own knowledge, he has seen men driving for his company for two years, since he has been there, and some have driven for them longer.

By Mr. Diehl:

Q. Now, what is your experience with respect to the number of hours worked per week, of your own drivers, as compared to the owner-operators?

A. Well, I think——

Mr. Burton K. Wheeler: If you know.

Mr. Diehl: Always assuming that he knows from his own experience.

A. Yes, I do know. I don't think there is very much difference between our own drivers and our owner-operator drivers, that is, difference in excess hours. I think in many cases our records would prove that our own drivers have as much or possibly more excess hours than our owner-operators.

By Mr. Diehl:

Q. When your owner-operator's unit is being repaired, [fol. 1653] does he take out one of your units or does he rest up while that is being done?

A. He rests up.

Q. Isn't it a fact that he makes more money per week than your regular employees?

A. He does.

Q. So that, as far as his living is concerned, he doesn't have to put in as much time?

A. That is right.

Q. And he is getting some return on his investment in his equipment; is that it?

A. Yes.

Exam. Lawton: Wouldn't the danger be that he would be making so much money that he would be inclined to put in as much time as he could? The more hauling he does, the more revenue he gets; isn't that true?

The Witness: Yes, that is true, but he can only make so many round trips per week, and it wouldn't be any more than our own drivers could make.

Exam. Lawton: I see. You hold him down to a certain amount of business; is that right?

The Witness: Yes, we don't differentiate from our own drivers from an owner-operator driver. When they hit the terminal point, they come in line.

Exam. Lawton: They take their even turn, in other words?

[fol. 1654] The Witness: That is correct.

By Mr. Diehl:

Q. Now, Mr. Walters, you have a situation, as I understand it, where certain haulers come in from the west to Chicago hauling livestock, and they have been doing that for a number of years, and, as I understand, you utilize those facilities on the return trip; is that correct?

A. We do.

Q. In so far as you utilize the facilities of those fellows on the return trip, are you using now the same people that you were using a couple of years ago, more or less regularly for that service?

A. We are.

Q. Are they what we call in this business bull haulers?

A. They are.

Q. Do you feel that if a regulation were established prohibiting the use of those cattle haulers, that it would seriously affect your ability to serve west of Chicago?

A. It would.

Q. Is your company in a position, or is it the policy of your company, to see to it that the leased owner-operators

are supervised with respect to safety of equipment, driver's log, and so forth, the same as your own employees?

A. We are.

Q. How do you handle your driver's log for your leased operations?

[fol. 1655] Well, in many cases on our line it is a little different than it is on other lines, due to the fact that we may sometimes load a truck from Chicago to some point in Michigan, and then our agent in Michigan may load him into St. Louis and we wouldn't see that truck for possibly four or five or six days. We, at the same time, would collect all his logs and whatever other records he may have. At other times, of course, if he is just on a trip lease basis, our agent in the other town would collect his log.

Q. And when you make your reports to the Commission with respect to hours of service, and so forth, you include in those violations of hours of service by your owner-operators the same as you do for your own employees; is that right?

A. We do.

Q. Is that the record you have in mind when you say that from your experience you had less trouble with your owner-drivers than you did with your company employees?

A. That is right.

Q. Are you familiar with the testimony of Director Blanning?

A. I am.

Q. Do you know of any prevalent abuse of the leasing privileges that are occurring in your territory?

A. Well, I would say once in a while we do have an abuse as to the proper identification of a piece of equipment, but I do not think that too many of those abuses are permanent [fol. 1656] in our territory.

Q. I take it what you recommend here is that the Commission be as strict as they can with respect to identifying a particular unit as to who it is working for when it is on the road; is that it?

A. That is right.

Q. Do you feel that if that were carefully done that that would go a long way to alleviating these alleged abuses that have been pointed out in previous testimony?

A. I do.

Q. Do you think that any of those other suggested restrictions are necessary to accomplish that purpose?

A. Well, I don't think so. I think that if the Commission forced these carriers to properly identify their equipment, and so forth, I think that would alleviate the situation.

Mr. Diehl: I think that is all for now.

Exam. Lawton: Mr. Pou:

Cross examination.

By Mr. Pou:

Q. Mr. Walter, what record does your company have of the hours of service put in by these drivers during their operations other than for your company? These livestock haulers, for instance, hauling from Missouri into Chicago? What record do you have of the hours that they put in on those hauls?

A. We do not have a record of the hours put in before [fol. 1657] they come to work for us.

Q. So you don't know whether the man, when he goes to work for you, has already driven ten hours and is then ready to start out with your load or not, do you?

A. I do not know that, but from the amount of accidents we have had in the State of Iowa, I think the men were rested properly before they took the load out for us.

Exam. Lawton: Please keep your voice up.

By Mr. Pou:

Q. But you say that is the only basis that you have for knowing whether or not he has previously exceeded the hours?

A. That is correct.

Q. Merely the fact that he doesn't have any accidents?

A. That is right.

Q. Now, I believe you stated also that the only abuses that you know that need corrections were incident to the improper identification of vehicles?

A. Well, there are some abuses in excess hours.

Q. You mean abuses in excess hours on account of leasing practices?

A. No, not any more than it is on our own equipment.

Q. Well, on account of leasing practices, then, the only abuses about which you know, in all of the territory served by your company, have to do with the improper identification of vehicles; is that right?

[fol. 1658] A. That is right.

Q. Do you have, at these various points that your company serves all the way from the western part of New York State to Omaha, Nebraska, terminals at a number of those places?

A. No, we have a terminal at Cleveland, Ohio, and one in Detroit, Michigan. The other one is Chicago. That is the home office.

Q. Do you have agents in those three places?

A. In Omaha.

Q. Well, of course, you have your headquarters at Chicago, but in the other places, the other two places named, do you have agents?

A. Yes, sir.

Q. Do you have agents at any other places?

A. No, sir.

Q. You don't have dispatchers even at any of those other places?

A. No, we do not.

Q. There is no way, then, for you to obtain any check through any employees of yours as to when a driver loads or unloads at any of these places, when he leaves or arrives at either of them; is that correct?

A. No.

Q. You depend, then, only on what the driver reports to you on his log?

A. That is correct.

[fol. 1659] Mr. Pou: I believe that is all.

Exam. Lawton: Mr. Todd:

Cross examination.

By Mr. Todd:

Mr. Walters, of the 85 percent of your vehicles that are leased, disregarding for the moment the bull haulers that you use going westbound, how many of them are trip-leased vehicles as opposed to leased for a term?

A. I wouldn't have the exact figures, but there are not too many trip leases due to the fact that most of our operations are centered around Michigan, and Michigan, of course, being regulated, we are under a long-term lease with the drivers. They run into Michigan for us and come back.

Mr. Burton K. Wheeler: In Michigan what is the regulation?

The Witness: That the operator entering the State of Michigan will have to report load back for us out of Michigan.

By Mr. Todd:

Q. This hauling of iron and steel products, a good deal of it is a one-way haul, anyway; isn't that right?

A. No.

Q. Do you have a balanced movement?

A. In Michigan we have a balanced movement.

Q. And in the hauling of that freight, don't you use flat bedded equipment to a large extent?

A. Flat bed or half-sized equipment.

Q. Which is not generally adaptable to the handling of general freight; isn't that right?

[fol. 1660] A. That is correct.

Exam. Lawton: Are most of them domiciled in Michigan?

The Witness: No. Some are domiciled in Chicago. Some are domiciled in Ohio, too.

By Mr. Todd:

Q. Mr. Walters, being a resident of Chicago, as I take it you are, haven't you heard of a number of instances in and around that city where owner-operators have trip-leased their vehicles to shippers, in some instances even where the Commission has prosecuted them?

A. I have never heard that. I know that none of our drivers have done it.

Q. I wasn't saying that your drivers have, but you were talking about abuses that you knew of. Have you been in the trucking business in Chicago for the last two years?

A. Yes, sir.

Mr. Todd: That is all.

Mr. Burton K. Wheeler: I have a few questions, Mr. Examiner.

Cross examination.

By Mr. Burton K. Wheeler:

Q. You have a terminal in Cleveland and one in Detroit?

A. That is correct.

Q. Who do you employ at your terminal in Cleveland?

A. We have an agent at Cleveland and an agent in Detroit.

Q. Just one agent?

A. That is right.

[fol. 1661] Q. I hand you this photograph and ask you if you recognize that photograph.

A. Yes, I do.

Q. Is that your terminal there?

A. That is right.

Mr. Diehl: Terminal where?

The Witness: Cleveland.

Mr. Burton K. Wheeler: I will mark for identification the portion which represents your terminal there. Is that it?

The Witness: Yes, sir.

Mr. Burton K. Wheeler: I ask that be introduced in evidence.

Exam. Lawton: It will be marked as Exhibit 15.

Respondents' Exhibit 15, witness Walters, marked for identification.

By Mr. Burton K. Wheeler:

Q. Is your terminal in Detroit of a similar size and character?

A. No, it is a little bigger than that.

Q. A little bigger than that?

A. Yes.

Q. You have only one man in Detroit?

A. Yes.

Q. Do I understand you to say that your owner-drivers work for you regularly?

A. Yes.

[fol. 1662] Q. Are they on long-term leases?

A. Most of them are on long-term leases.

Q. How many of them, would you say? What proportion of them?

A. Well, I would say 75 or 85 percent of them.

Q. Do you feel that that is a better way of handling it than through a trip lease?

A. Well, I wouldn't say it was.

Q. Well, you have more control over them under those conditions, do you not?

A. Not any more than we would with a trip lease operator.

Q. Let me ask you this: When they are working for you under a long-term lease, if they go from one terminal to another, they are still in your employ when they come back, or whatever they do after that, are they not?

A. That is right.

Q. Whereas if they only go on a one-way trip, when they get, we will say, from Chicago to Cleveland, they are discharged in Cleveland and they can then pick up anything they can pick up from a shipper or anybody else?

A. That is right.

Mr. Diehl: Excuse me for interrupting, Senator. Again the Senator has used the words "pick up from a shipper." I want it clear that this company isn't sanctioning anything. If a driver does it, he does it on his own.

Mr. Burton K. Wheeler: I think that is quite clear.

[fol. 1663] By Mr. Burton K. Wheeler:

Q. From your experience—and you have had two years experience—do you know whether or not some of these people that you have had on trip leases do pick up, say, at Cleveland, if they are coming back to Chicago, from a shipper?

A. I do not.

Q. You don't know whether they do or whether they do not?

A. That is correct.

Mr. Burton K. Wheeler: That is all.

Exam. Lawton: Mr. Eldred.

Cross examination.

By Mr. Eldred:

Q. Mr. Walters, you said that if leasing was prohibited or restricted, that it would, first, almost put you out of business or else greatly handicap you; is that correct?

A. That is correct.

Q. If that applied to all carriers, why would it put you out of business? If all your competitors were on the same basis?

A. Well, due to the fact that our operations are 85 percent lease operations, and we only own 15 percent of our equipment.

Q. Why couldn't you purchase equipment?

A. I think it would take a lot of money to buy 85 percent more equipment.

Q. That is the reason it would put you out of business?

A. I think it is a good reason.

Q. But I mean that is the reason?

[fol. 1664] A. It is the reason.

Q. I see. And yet, when you asked the Commission for temporary authority, you stated that you were able to furnish the equipment?

A. That is correct.

Q. But it wasn't your equipment you furnished?

A. No, we are always able to lease some more.

Q. But it wasn't your own equipment?

A. That is right.

Mr. Burton K. Wheeler: That is all.

Exam. Lawton: Mr. Lordan.

Cross examination.

By Mr. Lordan:

Q. Mr. Walters, is your operation primarily iron and steel?

A. It is primarily iron and steel.

Q. And this operation from Cleveland, Detroit, Chicago, western New York: is that movement of steel westbound, primarily?

A. No, it is the movement of steel eastbound out of the Chicago commercial zone.

Q. Out of Chicago commercial zone eastbound?

A. That is right.

Q. Is it primarily one-way movement eastbound of steel?

A. No, we do load a lot of steel coming back out of Michigan.

Q. That operation is conducted in 15 percent of your own equipment and 85 percent driver-owned equipment; is that right?

[fol. 1665] A. That is right.

Q. Special equipment?

A. Well, it is flats and all open-top equipment.

Q. All open-top equipment?

A. That is right.

Q. Now, the majority of that equipment, does it operate in and out of the State of Michigan?

A. That is right.

Q. And has the State of Michigan a requirement by its Public Service Commission requiring that your leasing be on a different arrangement than that permitted to be in vogue by the Interstate Commerce Commission?

A. Correct.

Q. That hasn't hampered your operation particularly, has it?

A. No, it hasn't.

Q. What would be the situation with relation to your company and with relation to your east and west-bound movement of steel—I am not talking with relation to your bull haulers now—if this Commission merely required that that lease be on a term rather than on a trip basis?

A. Well, I think it would still hurt us in this respect: You see this hauling of iron and steel products is unusual, due to the fact that an iron and steel shipper may call you one day and say, "We have so much to move," and, of course, if you needed a trip lease equipment to move it, [fol. 1666] you couldn't possibly move it that particular day. Other days you may find that it would slow up.

Q. Then, as I understand it, it would bother you on the bulges of the movements, or on the peaks?

A. That is right.

Q. Well, don't you have peaks operating in and out of the State of Michigan?

A. Yes, we do.

Q. And you are under the Public Service requirement in Michigan of having the lease on a term basis, are you not?

A. That is right.

Q. Do I understand that people haul cattle or bulls, as you call it, from points in the west, Nebraska and other points in the west, to the Chicago area?

A. That is right.

Q. Do I understand, Mr. Walters, that as these carriers, owners of equipment, transport livestock to the Chicago market, that you load them with steel westbound?

A. That is right, sir.

Q. Their movement into the Chicago market, with cattle, I take it, is very spasmodic?

A. No.

Q. Do they have regular movements of cattle?

A. They have regular movements of cattle.

Q. And you have regular movements of steel out on the [fol. 1667] cattle trucks westbound; is that it?

A. That is right.

Q. None of those trucks operate into Michigan?

A. No, none of those trucks operate into Michigan.

Q. Those are on more of a trip-lease basis than your other regular steel hauls?

A. That is correct.

Q. What kind of equipment does your company own?

A. The same kind of equipment that our lease operators own. It is all open-top equipment.

Q. You operate probably 15 pieces of equipment?

A. That is correct.

Q. And that is licensed in Illinois?

A. Some licensed in Indiana.

Q. Some licensed in Indiana?

A. That is correct.

Q. Where is the rest of this equipment licensed? All over the domicile of the owner-operators?

A. That is right.

Q. And you pay all on a percentage of the revenue earned by the equipment utilized in the service?

A. That is correct.

Q. Do you have a fixed percentage?

A. Yes, we have a fixed percentage.

Q. What is the percentage?

[fol. 1668] A. Well, I don't know whether I ought to answer that.

Mr. Diehl: Does he have to answer that, Mr. Examiner? It is more or less a highly competitive area. I don't know what the answer is going to be, frankly, but it is a highly competitive area. I don't know whether he has to answer that or not.

Don't answer the question. You don't have to. Those are my instructions.

Mr. Burton K. Wheeler: Well, just a moment. After all, it isn't up to you to tell him whether to answer or not. It is up to the Examiner.

Mr. Diehl: Well, I am his counsel and I am instructing him that he doesn't have to answer.

Mr. Burton K. Wheeler: That is a question the Examiner passes upon and not counsel.

Exam. Lawton: I think it is enough to know that they operate on a percentage basis.

Mr. Lordan: Could you give me the range in which that percentage varies as between the carrier, owner-operator, and your company?

Exam. Lawton: Yes, that is a pertinent question.

The Witness: When you say range, what do you mean?

Mr. Lordan: Generally, is it five, ten, fifteen, twenty, twenty-five percent retained by your company?

Mr. Diehl: He doesn't have to answer that. If you want [fol. 1669] to ask him is it less or more than 25 percent, I will agree to it. Otherwise, he doesn't have to answer it.

Mr. Lordan: I will let the Examiner rule on it. If the Examiner rules it is not material in this record to have

what this carrier's percentage is, it is perfectly satisfactory to me.

Exam. Lawton: I won't require any carrier to reveal anything like that, if it considers it a trade secret.

Mr. Eldred: Well, Mr. Examiner, we don't want any trade secrets, but I think we can ask him what his range is between.

Mr. Lieberman: Maybe there is no range.

Exam. Lawton: There seems to be reluctance on the part of both the witness and the counsel to disclose that.

Mr. Diehl: Mr. Examiner, I will take full responsibility for it. I am instructing the witness not to answer the question.

Mr. Burton K. Wheeler: I assume that the Commission wants to get at the practices in order to determine what kind of practices, and it seems to me that a lot of this information ought to come out. After all, it does bear entirely upon the economic situation that exists in this industry, and the kind of practices that are carried on.

Now, if a man is going out and he has a permit from the Interstate Commerce Commission to carry on this business, [fol. 1670] and he is granted what amounts to a certain monopoly, the question always comes before the Commission as to whether or not they should grant more permits to other people to compete with this man or not, and here is what some of them are doing: They are getting a permit which grants them a certain type of monopoly. Then they go to work and they only own a few automobiles themselves, or a few trucks, whatever it is, and then they sublease it to other people, and they came to the Commission asking for higher rates or for this rate. Then, they go out and hire somebody to do the work for them at a much lesser rate.

Now, it is certainly pertinent and competent for the Commission to know, in order to know whether or not they are entitled to a higher rate or whether they should permit this practice of sub-leasing or leasing of these trucks at all, what their charges are.

Exam. Lawton: This is not a rate proceeding, however.

Mr. Burton K. Wheeler: The rate that they are charging, it seems to me, is a very pertinent factor.

Mr. Lordan: I think it should be brought out that in Mr.

Blanning's original statement, which he read here, that the question of the amount of money received and the expenses incurred by these carriers with relation to their operating ratios, was one of the situations which this Commission had to take into account. We didn't bring this [fol. 1671] situation out at the beginning. The Commission did.

Exam. Lawton: Whatever percent the certificated carrier keeps is apparently almost clear profit. I think we can recognize that it is much more profitable than if it was paying all expenses, and I don't think we ought to go beyond that and compel a non-willing carrier to disclose it.

Mr. Lordan: I will put the question this way: Is it below 4 or 5 percent?

Mr. Diehl: You don't have to answer that question. I agreed to let him say whether it is more than 25 percent, or less. If you don't want to take that, I am not going to permit him to answer the question.

Mr. Lordan: You are not going to get down to anything finer than whether it is above 25 percent or below 5 percent?

Mr. Diehl: That is right.

Mr. Lordan: Mr. Walters, is it below 50 percent?

The Witness: That we give the owner-operator?

By Mr. Lordan:

Q. No, that you keep.

A. No, it is not below 50 percent.

Q. You don't keep 50 percent?

A. No, we don't keep 50 percent.

Mr. Lordan: That is all.

Exam. Lawton: Is there anyone else?

Cross examination.

By Mr. Driscoll:

Q. That equipment that livestock men use to bring live- [fol. 1672] stock into Chicago is not open-top equipment, is it?

A. A lot of it is open-top.

Q. And you can load steel in there with a crane?

A. Yes, sir. It is all loaded by crane. None of it is loaded by hand, with a few exceptions.

Q. Does the owner-operator have to pay for loading or unloading?

A. No, he does not.

Q. It is unloaded by crane out in Omaha?

A. All over western Iowa. You can't touch this freight by hand.

Q. Do you hold the owner-operator responsible for any loss and damage claims?

A. We do not.

Mr. Driscoll: That is all.

Cross examination.

By Mr. Evans:

Q. Mr. Walters, on direct examination you testified that your haul extended from western New York to Omaha.

A. That is right.

Q. Would you have any of your people hauling from western New York to Chicago?

A. No.

Q. What would be the longest haul which one driver could engage in?

A. Cleveland, Ohio.

Q. To Chicago?

A. Yes. Our operation is centered around a 300-mile operation.

[fol. 1673] Q. In your earlier testimony you said the owner takes no time on the road.

A. That is right.

Q. Could that be taken to mean he doesn't take a statutory rest period?

A. No.

Q. Are you familiar with the steel hauling situation in Cleveland?

A. Cleveland to Chicago?

Q. Well, the pickup situation, put it that way, in Cleveland.

A. No, I am not.

Q. Who are your principal shippers from Cleveland, do you know?

Mr. Diehl: You don't have to answer that.

By Mr. Evans:

Q. Would you know whether your shippers—

Mr. Burton K. Wheeler: Let him answer.

Mr. Diehl: I will put it this way: I will object to it, and I know the Examiner is going to sustain.

Exam. Lawton: You don't know whether I am or not. Do you mean by name or the nature of the commodity they ship?

Mr. Diehl: He means by name.

Mr. Evans: By name.

Exam. Lawton: Whom do you represent?

Mr. Evans: I represent the Truck Drivers Union of Cleveland.

Mr. Diehl: Certainly this witness doesn't have to give the name of his shippers to this counsel or any other [fol. 1674] counsel. His accounts are his company business.

Exam. Lawton: Is that important?

Mr. Evans: I think I can make my point without that, Mr. Examiner.

Exam. Lawton: All right.

By Mr. Evans:

Q. Do you know whether the shippers in Cleveland ever call in a number of trucks and are only able to load one or two at a time?

A. I do not know that situation, Mr. Evans.

Q. Do you know whether your Cleveland agent ever puts owner-operators to work on a telephone call?

A. No, I don't know that, either.

Q. Do you know whether some of your receivers in Cleveland hold your trucks without unloading them sometimes as much as three days because of inability or unwillingness to accept the load at that time?

A. There may be some cases.

Q. How would your man mark the log book for the time that he was held with his load?

A. He would show on his log book that he was in Cleveland at that time for that period of time.

Q. Would he mark it on the on-duty line?

A. I don't know whether he would or not.

Q. He is responsible for the truck during this time, is he not?

[fol. 1675] A. Yes.

Q. You testified that 75 percent of your drivers were long-time drivers with you; am I right?

A. That is right.

Q. In other words, they have been there more than a few weeks?

A. That is right.

Q. You also testified that a restriction on leasing would hurt your company seriously.

A. That is right.

Q. Would a 75 percent restriction on leasing hurt your company?

A. 75 percent?

Mr. Diehl: Do you understand the question? I don't.

The Witness: No.

Mr. Evans: He has testified that 75 percent of his drivers or owner-operators are long-term owner-operators with his company.

The Witness: Yes.

By Mr. Evans:

Q. Now, would a restriction of this sort, that 75 percent of your owner-operators must be on long-term lease, hurt your company?

A. I say it would, in answer to that other question. We still need the trip lease, where we have an abundant amount of freight to pick up and we don't have enough leased equipment or our own equipment.

Q. You use 75 percent of the total number of owner-[fol. 1676] operators, whom you use steadily?

A. Yes.

Q. Would it hurt your company any if the Interstate Commerce Commission required you to put 75 percent of your owner-operators on long-term lease?

A. Yes, it would.

Mr. Evans: That is all.
Exam. Lawton: Is there anything else.

Cross-examination.

By Mr. Heinecamp:

Q. Did I understand you to say that you do lease equipment from Omaha, going to points east?
A. No, I didn't say that. When I say the west, I mean from Iowa.
Q. You meant from Iowa to Omaha?
A. Chicago to Iowa.
Q. Nothing from Omaha to Chicago?
A. No. We never leased a truck at Omaha.

Mr. Heinecamp: Thank you. That is all I wanted to get clear.

Redirect-examination.

By Mr. Diehl:

Q. Mr. Walters, are your drivers, including your leased owner-operators, members of the union in Chicago?
A. They are.

Mr. Diehl: That is all.
Exam. Lawton: You are excused.

(Witness excused.)

[fol. 1677] Exam. Lawton: Is there any objection to the receipt of that photograph, Exhibit 15?
Mr. Diehl: I don't have any objection to it.
Exam. Lawton: Does anyone desire a copy?
Mr. Lieberman: Unless a point is going to be made of it on brief. I would like to have a copy.
Exam. Lawton: I won't order the furnishing of copies. The exhibit is received.

(Respondents' Exhibit 15, heretofore marked for identification, received in evidence.)

Exam. Lawton: We will take a five-minute recess.

(Recess taken.)

Exam. Lawton: Come to order, please.
Have you distributed your exhibits, Mr. Driscoll?
Mr. Driscoll: I have.
I will call Mr. Conner.

LEE CONNER was sworn as a witness and testified as follows:

Direct-examination.

By Mr. Driscoll:

Q. Will you state your name?
A. Lee Conner.
Q. Where do you live?
A. 56 Atlas Street, Akron, Ohio.
Q. How are you employed?
A. I am the Director of the United Truck Owners, Inc.
[fol. 1678] Q. Is that equivalent to saying managing director?
A. Yes, sir, managing director.
Q. What is the United Truck Owners of America, Inc.?
A. Well, it is made up solely of independent owner-operators. By that I mean you can't belong to this organization if you are a certificate holder. You have to be an owner-operator without rights to operate.
Q. And how long has this organization been in existence?
A. Since 1936.
Q. Has it always been under the same name?
A. No, it was, for two years, under the name of the Owner-operators Association, and was changed to United Truck Owners of America, Inc.
Q. What has been your own employment experience prior to that time?
A. I was a truck owner from 1931 until 1942.
Q. Where were you located, in what territory?
A. From Akron west into Texas, Oklahoma, and so forth.
Q. And when you started in, how many pieces of equipment did you have?
A. One.
Q. When you quit, how many did you have?

A. Six.

Q. Does the United Truck Owners operate any filling stations or anything of that kind?

[fol. 1679] A. Yes, they do have one.

Q. Where?

A. In Akron, 142 East South Street.

Q. What do they sell there?

A. Gasoline and accessories that truck owners need.

Q. Do you sell to anyone?

A. Oh, no, just to the members of the organization.

Q. Is it operated for profit?

A. No, it is a non-profit organization. And I might say that it is chartered in the State of Ohio as a non-profit organization.

Q. In how many states do you have members?

A. In 21, I believe.

Q. I notice they are mostly east of the Missouri River.

A. Back east.

Q. In the eastern half of the United States?

A. That is right.

Q. Did your organization send out questionnaires to your membership asking for certain information to be used in compiling statistics to be introduced here?

A. We did., and our organization sent out the questionnaires to the membership and to all other operators that we had names and addresses of, and the questionnaires are coming in daily.

Q. In a general way, you asked these people if they thought they should be represented at this hearing, and so [fol. 1680] forth, did you not?

A. We did. Practically all expressed the opinion that the owner-operators should be represented at this hearing, and stated that if the hearing should be held in their area they would attend if possible. Those answering the questionnaires were from the following states: Ohio, Indiana, New Jersey, Pennsylvania, Illinois, New York, Georgia, Kentucky, Minnesota, Maryland, Missouri, Oklahoma, Texas, Alabama, Kansas, Florida, North Carolina, Tennessee, Michigan, Virginia, and Connecticut.

Q. One of the questions that was propounded was the method of compensation. What did you find out from that?

A. Well, they reported 85 percent operated on percentage

and prefer that basis. 9 percent are operating on tonnage, and prefer that basis. 2 percent operate on tonnage basis, but prefer the percentage base. 4 percent are operating on mileage and prefer it. Those people on percentage who reported the figures received all the way from 50-½ to 88 percent. The majority of those reporting received 69 or 70 percent. Several reported receiving either 62, 67, 70, or 75 percent, according to the nature of the haul.

The percentage is not always uniform where a single carrier is involved.

Q. Well, now, 50-½ percent, for instance. The first percentage shown. Would you have any way of knowing [fol. 1681] whether that is 50-½ percent for the tractor only or for the tractor-trailer?

A. That was for the tractor only. These tractors were steel hulls.

Q. Now, the question was asked as to who pays the loading and unloading charges. What did you find out?

A. Of those reporting, 90 percent pay loading and unloading; 9 percent pay neither, and 1 percent pay under some circumstances.

Q. The question was asked regarding claims.

A. Of those reporting, 70 percent are held responsible for loss and damage claims; 15 percent are not so responsible; 15 percent reported that sometimes they are held responsible.

Exam. Lawton: Now, do you insist on reading all of this in? I think all of the results of that investigation are embraced in this document which I have here. Why couldn't that go in as an exhibit?

Mr. Driscoll: This didn't show, for instance, that 50-½ was restricted to a tractor only. I don't know. From my experience, these statements that are put in look as though they have never been read. I don't now. Perhaps the Examiner did, but I don't know whether anybody else ever did or not. I thought maybe it was better to put it in this way.

Well, let me call attention to the fact that there are some corrections on page 4. I suppose all of the copies dis- [fol. 1682] tributed have been corrected.

I might say, Mr. Examiner, that we do have a few copies of the blank questionnaire, probably 10 or 15. If you think

it would be helpful, I will put them in evidence. I will distribute a few copies for inspection.

Exam. Lawton: Do you want to put it in the record as an exhibit?

Mr. Driscoll: I think it would be a good idea to offer this blank questionnaire as the next exhibit.

Exam. Lawton: It will be identified as Exhibit 16.

(Respondents' Exhibit 16, witness Conner, marked for identification.)

Mr. Driscoll: The statement, then, Mr. Examiner, if it is going to be received as an exhibit, we will forego reading it. Do you want to receive it as an exhibit or have it copied into the record?

Exam. Lawton: Does that reflect the results of the investigation, the answers?

Mr. Driscoll: It does, up to a certain time. These questionnaires are still coming in, and we may at a later hearing want to amend the results.

Exam. Lawton: I think it can be identified as Exhibit 17. If you want to supplement it, go ahead with your examination.

(Respondents Exhibit 17, witness Conner, was marked for identification.)

[fol. 1683] Mr. Driscoll: You will notice that on the last page reference is made to our proposed standard lease agreement. That lease will be offered in evidence and another witness will testify concerning it.

That is all I have on direct of Mr. Conner. But bear in mind that the other witness will be the one to interrogate about the lease.

Mr. Eldred: The exhibit Mr. Conner introduced is No. 17?

Exam. Lawton: The questionnaire is Exhibit 16 and the statement of results, Exhibit 17.

Cross examination.

By Mr. Lieberman:

Q. How many members do you have, Mr. Conner?

A. Approximately 1500.

Q. Does Exhibit 17 tell how many of those 1500 own more than one unit?

A. No, it does not.

Q. Do you know what percentage of the 1500 own and operate but one unit?

A. No, I don't have any way of telling exactly. But I imagine it would be about 90 percent.

Exam. Lawton: On that point, on your preceding question, on page 2 of the exhibit, regarding drivers, it says "95 percent report that they drive their own equipment and do not require a helper."

[fol. 1684] Mr. Lieberman: That would indicate that 95 percent of your membership only own one piece?

Mr. Driscoll: No, that would indicate that 95 percent of the people answering the questionnaires own one piece.

By Mr. Lieberman:

Q. Do you know how many questionnaires were returned, from which Exhibit 17 was compiled?

A. Approximately 200.

Q. 200 questionnaires were returned?

A. Yes.

Q. As I understand it, you have approximately 1500 members?

A. That is right.

Q. You also indicated on direct examination that you sent out questionnaires to non-members.

A. That is right.

Q. Do you know how many non-members were mailed questionnaires?

A. No, I don't

Mr. Driscoll: I would like to say on that point that all of these were not mailed, these questionnaires. Lots of them were placed in boxes in filling stations, and call stations, where the operators would pick them up and we don't know how many picked them up. There were several thousand of them that went out.

Mr. Eldred: Could you tell us how many were distributed approximately?

By. Mr. Lieberman:

Q. Can you tell us, then, approximately the number of [fol. 1685] questionnaires that were distributed, either by mail or by placing them around in filling stations or handed personally to owner-drivers?

A. Four or five thousand of them.

Q. I also believe counsel indicated that questionnaire replies were still coming in; is that correct?

A. That is right.

Q. Are they coming in with any degree of regularity in numbers?

A. No. Some days there will be one; some days three; some days maybe six.

Q. How long have you been director of this group?

A. For two years.

Q. And during that two-year period, have you become familiar with a great number of your members?

A. Oh, yes.

Q. Have you become familiar with their operations and their problems and so forth?

A. Oh, yes.

Q. Would you say that the replies and the tabulations shown in Exhibit 17 represent a cross section of the operations and the opinions of your entire membership?

A. I would think so.

Mr. Lieberman: Thank you. That is all.

Exam. Lawton: Mr. Jessup, do you have any questions?

Mr. Jessup: No, sir.

[fol. 1686] Mr. Driscoll: I want to say that I didn't get an opportunity to put this in as we had intended, but you will find also reference to a postcard poll there.

The Witness: Postcards were placed out in filling stations and call stations all over the country. We also had returns from those. And the four questions are recited in Exhibit 17.

Exam. Lawton: Page 4.

Mr. Eldred: How many of those postcards did you send out?

Mr. Driscoll: We didn't send out any, we placed them—

Exam. Lawton: Let the witness answer, please, Mr. Driscoll.

The Witness: Those postcards were placed in filling stations, eating places and places like that.

By Mr. Eldred:

Q. How many did you distribute?

A. There must have been six or seven thousand of them.

Q. How many did you receive upon which you based the percentages contained in your statement, Exhibit 17?

A. Approximately 50.

Q. Did you check to see where they came from, whence they were received from, and what the addresses of the owner-operators were, among those 50?

A. I think it is in here, that they come from these 21 states.

Mr. Driscoll: The states are named there, in the middle of page 4, Exhibit 17.

By Mr. Eldred:

Q. In other words, from ten states you received 50, so that would be an average of five postcards from a [fol. 1687] state?

A. That is right.

Exam. Lawton: Does anyone else have any questions?

Cross-examination.

By Mr. Diehl:

Q. Mr. Witness, do I understand that at one time you were an owner-driver?

A. That is right.

Q. Are you now?

A. No.

Q. How long has it been since you were?

A. Since 1942.

Q. Since you have not been an owner-driver, since 1942, have you kept yourself familiar with your section of the industry, nevertheless, by doing this work?

A. That is right.

Q. I notice your exhibit indicates that a preponderance of those replying to the questionnaire prefer the percent-

age method of compensating the owner-driver; is that correct?

A. That is right.

Q. Can you tell me from your experience or any information you have why that is?

A. Well, I think this: that is the fairest way that an owner-operator could be compensated, either in rate increases or anything that might happen. There are no negotiations to get into to get your rate up.

[fol. 1688] Q. So that if you haul a highly valuable cargo a thousand miles, you want to get the benefit of the high rate that that cargo takes; is that right?

A. That is right.

Q. And if you haul a load of sand, you are willing to settle for what that brings?

A. That is right.

Mr. Diehl: That is all I have.

Exam. Lawton: If there is nothing further, you are excused.

(Witness excused.)

Exam. Lawton: Call your next witness.

Mr. Driscoll: I will call Mr. Nicholson.

B. B. Nicholson was sworn as a witness and testified as follows:

Direct-examination.

By Mr. Driscoll:

Q. Will you give your full name?

A. B. B. Nicholson.

Q. Where do you live?

A. Akron, Ohio.

Q. How are you employed? What business are you in?

A. I am in the motor trucking industry as an owner-operator.

Q. How long have you been an owner-operator?

A. Well, I have been an owner-operator since 1935, the

fall of 1935. Prior to that I did drive a truck some, for a carrier.

Q. What carrier are you working for now?

[fol. 1689] A. All States Freight, Inc., of Akron, Ohio.

Q. With what company did you begin operation?

A. I began as a driver for a company which is now out of business. I really couldn't tell you the name of it. It was just one of those early fly-by-night affairs.

Q. When did you first go to work with or for All States Freight, Inc., or its predecessor?

A. I first went to work for Transcontinental Car Forwarding Company in the fall of 1935.

Q. 1935?

A. Yes, sir.

Q. Is that the company now operated as a part of All States Freight?

A. Yes, it is.

Q. Were you with them continuously?

A. Well, there was an interval of probably three or four months that I changed over to another carrier, didn't like it, and for some reason or other went back to the carrier that I was with, and have continued with them since then.

Q. Was that about the period when Transcontinental Car Forwarding Company was going through receivership or bankruptcy?

A. That is right.

Q. So you were out during that period and then came back when All States took over?

A. I terminated my employment with them just before [fol. 1690] they went out into bankruptcy, and then when the situation was settled and they moved over into All States Freight, why, then I went back over there.

Q. How many pieces of equipment do you have now?

A. Three.

Q. That is three outfits?

A. Three complete outfits, that is, tractors and semi-trailers.

Q. And are they painted to conform to the fleet of All States?

A. They are.

Q. Have they been that way for a number of years?

A. They have been that way since I had them. The first

thing I did was to paint them to conform to their colors, and the lettering was also in conformity with the company-owned equipment, except for the fact that the company-owned equipment, the trailers had the letters clear across the side of the trailer whereas the individually owner equipment, or owner-operated equipment just had it in a triangle. That signified their markings.

Q. Did you ever haul any freight on your own?

A. Well, back in the old days when things were kind of unsettled, I think I did haul probably a dozen loads in my lifetime for an independent carrier, I mean on a trip lease basis.

Q. That was prior to the passage of the Motor Carrier Act?

A. That is right.

Q. But since you have been leased to All States, for [fol. 1691] instance, have you ever hauled anything of your own?

A. I might have hauled maybe one or two loads. Not more than that.

Q. Are you a member of the United Truck Owners Association?

A. Yes, sir.

Q. Are you an officer in it?

A. I am first vice president of the organization.

Q. Have you participated in all of their deliberations and meetings?

A. Well, I wouldn't say that I had participated in all of them, but I have come very close to it.

Q. According to the testimony of Mr. Conner here, your organization arrived at what is considered a satisfactory tentative standard lease for such operators as yourself. That has been distributed.

Mr. Driscoll: May that be marked Exhibit 18, Mr. Examiner?

Exam. Lawton: It will be so marked.

(Respondents' Exhibit 18 (Witness Nicholson) was marked for identification.)

By Mr. Driscoll:

Q. You have a copy of that before you, do you?

A. Yes, I do.

Q. Will you run down that lease—I think some of those items are self-explanatory, but take, for example, No. 3. It says, "The owner represents that he holds legal title to [fol. 1692] the above-described equipment," and so forth. What does that mean?

A. Maybe I better go back a little bit to why we have this lease and operating agreement set up as our intervention before the Interstate Commerce Commission. When we members of the Association first heard about this hearing on leasing arrangements from Transport Topics probably a few weeks after it first came out, we were very much interested in the thing because it seemed to affect us more than it did anybody else. Due to the fact that we had, as we contend, maybe more money in the business than the carriers themselves have—and I am sure that we haul more freight than they do—we felt that maybe we ought to try to protect ourselves a little bit. Some of us had been in the business from the time that it originated, pioneered it, invested our money and did the work and everything else, so it was only natural for us to assume that we had some interest in it.

So in a series of meetings after this proposed order of the Commission came out, we discussed what we should do about it. Of course, we never had our membership all together at one time, but we did talk to them wherever we found them, and when we did hold our meetings we had a few there that time, and the next time we probably had a different bunch, and the conclusion was that probably to eliminate a lot of ills of the industry—and we do think there are some ills, along with the Interstate Commerce Commission—we thought that probably a uniform lease [fol. 1693] as a consensus of opinion would more or less get down to practical points—and we are practical men, of course—and eliminate a good many of the ills of the industry.

We have written out a lease. Of course, it is not the answer to a "maiden's prayer" or anything like that, and maybe not the thing that the Interstate Commerce Com-

mission will want to adopt, but we do think that probably it should be given some consideration.

Q. What kind of leases do you now have?

A. Well, that is the proposition. Due to the sketchy form of the leases that we did have, it never meant too much of anything. I was interested in the exhibit, this afternoon, of the gentleman from California, which I have here. They all seem to read that the owner-operators are responsible for everything. Of course, we, as an organization, work with our carriers, I would like to state that fact. The carriers are very much interested in them. It is a part of our business, and we are not out to break them down or anything like that. We would like, as the Commission would, I suppose, to define the responsibilities, and so forth, of the carriers, and also the responsibilities of ourselves, so that we do understand it.

Q. Let me ask you this at this time: Was your organization invited by the American Trucking Association to express your views on any phase of this subject?

A. Not that I know of. I think if they had, I would have known.

[fol. 1694] Q. Well, as a result of all of these conferences, and so forth, you arrived at the conclusion that instead of the numerous leases that you now have, that you ought to have one more or less standard lease to go by; is that right?

A. That is our conclusion. We gathered up all the leases that we could find in the country. Of course, we had access to them through our membership and I think we covered a good, big territory, with respect to the leases that were in existence, and we kind of decided that a uniform lease would be the proper thing to present to the Commission.

Q. And this Exhibit 18 represents your tentative lease and operating agreement, which you are submitting here?

A. That, with the possible revisions, of course.

Q. Now, will you take up some of these items, particularly Item 3, this question of title, and state just why that is in there?

A. From our questionnaire, we found that about 56 percent of the people that were driving owner-operated equip-

ment on the road were required by the carriers to give them the title. In the first place, we couldn't understand clearly in our minds how we could give them the title to a piece of equipment and then turn around and lease them the same thing again. Of course, there is a little legal aspect there, and I am not a lawyer, so I wouldn't know how that could be done. But there has always been some doubt in our [fol. 1695] mind as to the question of whether it could be done or not.

Another thing is, if the company holds the title to our property, and there was an accident where somebody would run over you, you don't have the privilege of trying to collect for yourself any damages without first going to the carrier and finding out what he is going to do about it, because he holds title to the thing. Sometimes he is too busy, and sometimes they do cooperate, of course, but if we held the title to our own equipment I don't think it would be necessary for him to appear in the case, probably. So we would have more of an advantage in collecting for these things. The other thing is he might become insolvent and if he had our titles, it might require a lot of legal advice and court orders, and so forth, to get our titles back. There are quite a few things that enter into it that we don't like.

Q. Notwithstanding that, more than half of your members stated that they did have to give a bill of sale transferring title to the carrier?

A. That is right. We don't think it is necessary. So long as we give them a lease, and the lease is signed by the contracting parties, we feel it is not necessary to turn around and give them the title, too.

Q. Well, now, the hour is getting late. Let us run down some of these items that perhaps are not self-explanatory. For instance, on Item 10, that deposit. What is the practice [fol. 1696] now? I believe Mr. Conner stated that, but what is the purpose of Item 10?

A. I believe that is stated in the questionnaire. We asked in the questionnaire how many of them had deposits, how much was required, and so forth. I think it is in there. I don't know what the figures are, but, in the first place, I think that is a hold-over from the days when maybe the

owner-operators were irresponsible. We don't feel that we are that way any more. We feel we are a part of the business, have an investment in it, and we don't think it is entirely necessary. It is all right to give a bond, if that is required, but I don't think any cash deposit should be required. That is the consensus of our membership. They hold anywhere from $40 to $270 per unit as a guarantee for something or other—I think probably $70 is reserved for cargo claims, or something like that, and then in case a fellow should happen to quit and run off with something, they think maybe they might have to hold some cash of his.

Another thing, we are paid, sometimes, on the 15th of the following month—in most cases, at least, that is the way it is—and we are only paid up to the 30th of the month, and during the period from the 30th of the month to the 15th of the month, there is generally a bunch of money held back, anyway. Some carriers, of course, allow them to go and draw at any time they want to the amount of money shown on the books, but others are not so fortunate as to [fol. 1697] have that. So they hold enough money back that it doesn't require a cash deposit. Then, there is a possibility that they could use that money. Of course, they do use it. If a carrier has 500 pieces of equipment and he has a $200 deposit per truck, he has operating capital that we furnish, and we don't think that is necessary at all.

Q. Well, you contribute to the operating capital, first, by furnishing your equipment, secondly, by putting up a deposit, and, thirdly, by getting about a third of your money held back at all times?

A. Well, I wouldn't say it is a third of our money. Maybe a third of the monthly statement.

Q. That is what I mean, a third of your monthly earnings.

Now, insurance. What is the general practice as to carrying the different kinds of insurance? I don't know that that questionnaire was very clear, and I think some of the answers that I saw indicated they weren't clear on it. Could you tell us what the practice is in your own case, and what you know to be the practice in the case of the industry generally?

A. The practice in our own case is that the carrier assumes the liability, property damage and liability. Of

course, we have a clause in our lease that requires us to pay $50 on cargo claims. That is more or less uniform, I think, throughout the industry.

Q. In other words, you pay loss and damage claims up [fol. 1698] to the first $50?

A. That is right. Of course, the collision, fire and theft, and so forth, is carried by the owner-operator. That is his responsibility.

Q. Now, Item 15, loading and unloading. Will you touch on that briefly?

A. I don't know just what the figures are here in the questionnaire, but most generally the owner-operator pays all his loading and unloading charges, and together with a lot of transfer charges—pick up and delivery charges—out of his percentage. We feel that that is not necessary. We think that the carrier should be responsible for the pickup charges and the delivery charges, and that he should also be responsible for the cargo claims, and, of course, we realize that when he is responsible for the cargo claims and the pickup and delivery service and so forth, naturally he is not entitled to the percentage that we now get. We would be willing to compromise on that.

Q. Do you have anything to say about how much shall be paid for cost of labor for loading and unloading?

A. No, we do not.

Q. Do you have any way of checking up on that to know?

A. Well, slightly, but not enough to, without a lot of bother, substantiate any evidence.

Q. Do you have any facilities for investigating claim damages?

[fol. 1699] A. In most cases, no.

Q. Do you have any way of handling salvage of damaged freight?

A. We are not equipped to handle salvage. Most of us who sometimes drive our own trucks are out of town, and the cargo will come up and disappear, and so forth, and the next thing we know about it, we have a claim on the statement, probably it might be held at the terminal, and again it might be disposed of. We don't know.

Q. Now, 16 relates to bridge tolls, ferry tolls, and so forth. Mr. Conner's statement shows the returns from the questionnaire.

A. In most cases we find that the tolls are borne by the owner-operator. We don't think that they should be, although, as I said before, the tolls, and those other things that enter into this, could probably be adjusted on a percentage basis. But we think that the carrier should be held liable for the tolls at ferries, bridges, and so forth, because sometimes they have a dispatcher in there maybe who is not too familiar with the economic end of it. He just thinks about freight, and he can run you through bridges and under tunnels, and so forth, backwards and forwards, and so long as you pay the cost, he does not consider too much how much it does cost.

Q. On Item 24, which deals with compensation, you provide what?

A. Well, as stated in our Exhibit 18x we find that the majority of the owner-operators work on a percentage basis, and this specified 70 percent in our lease is practically a [fol. 1700] standard rate of pay for a from dock-to-dock movement. That is where an owner-operator picks up a load of freight at a certain terminal and delivers it to a certain terminal, that is the rate of pay. That is, that would approximately be the rate of pay for that kind of an operation. Now, I think that maybe some steel haulers, in accordance with our poll here, get as high as 88 percent—that is, where there is no pickup and delivery to be made, where there is one pick-up and delivery shipment. Naturally, we would get a higher percentage than the man in the case where the company has to furnish pickup and delivery service. It is a sort of complicated piece of business and I think some solution could be arrived at as to that type of operation.

Q. I think perhaps the other items would require a little explanation, but if so, someone else may ask you to clarify them. I want to ask you this question: are you in favor of trip leasing as well as long-term leasing?

A. We don't see any reason for not having trip leasing, if it is properly regulated. I might say here, in regard to this uniform lease, that the practical solution that we arrived at as an organization was that the carrier, or the owner-operator, would carry one of these leases with him, signed by the company and signed by himself, and this

would be his authority to operate over any given territory. And on a trip lease proposition, he could carry this lease with him and when he got from A to B, if they didn't [fol. 1701] want to use him, and if he wanted to go to B and get another load of freight to go some place, he would still retain this lease with him until he picked up this next load of freight. I- would be this carrier's responsibility to see that he had this lease straight through. It would be the other carrier's responsibility to pick up the lease and issue him a new lease. It would be the carrier's responsibility that picked the owner-operator up from the first operation to either wire or by some method refer him back to where he was, pick up his log books, and so forth, thereby establishing a chain of events all the way through. It could be very easily worked out, I think, It is the consensus of opinion of our membership that it could be worked out in that manner and be practical.

Q. You started in as a truck driver and got to be an owner-operator; is that generally the situation, as far as these old timers are concerned?

A. Well, I don't think it is—that is practically the way all the owner-operators came into existence. They first started as truck drivers and then bought themselves a piece of equipment. I would say this, that it is the ambition of most any truck driver who wants to have anything to become an owner-operator, and after that probably, when he gets up in the world a little bit, he probably would have ambitions to become a carrier after a while. I think that is about the process. It moves along that way.

[fol. 1702] Q. Do you know any former owner-operators who have become carriers?

A. Yes, I do.

Q. In Akron?

A. Yes.

Q. Quits a number of them?

A. Quite a number of them.

Q. There is one question in that questionnaire which I don't believe is tabulated. The question was asked if they were members of a union. What is the situation?

A. Practically all are members of the union.

Q. I know the hour is getting late and everybody is

looking at the clock, but did you have something more that you wanted to say to the Commission at this time? Let me ask you this; give an illustration of why you would perhaps use a trip lease yourself, or make a trip lease yourself?

A. Well, there is a possibility always of strikes or lockouts or floods—a lot of conditions that might occur, if I was operating on a long trip lease and had no provisions for subleasing—so that I could go to another territory and there retain my interest in my equipment without having the banks pick it up. If the condition lasted long enough, it could break me, make me lose my home and practically everything. I think we do have to have one-trip operators.

[fol.1703] Q. But if you did have to make one-trip leases, in an emergency like that, you wouldn't consider yourself just an irresponsible gypsy?

A. Absolutely not. I certainly would not.

Q. Well, the fact that you did take your equipment off of the Transcontinental and put it into another carrier during the financial difficulty and brought it back is a pretty good illustration of what you would like to be free to do again; is that it?

A. That is right. I think it is the man's privilege to either stay in business or get out of business, or practically do as he—not as he pleases, of course, but under the regulations of the motor trucking industry he should be allowed to do so.

Mr. Driscoll: If you have nothing further that you think should be added at this time, that is all I have.

The Witness: We would only like to suggest to the Commission that they give this uniform leasing arrangement consideration. We believe it is probably the practical solution to the irregularities that exist.

Exam. Lawton: You mean this operating agreement?

The Witness: Yes.

Exam. Lawton: Exhibit 18?

The Witness: Yes. We are not the only illegal operators and the whole system could probably be set up a little differently with this arrangement. Of course, we don't want to take away from the fact that all equipment